SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 40.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND SWIFT LUMBER COMPANY, APPELLANTS,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY AND FERNWOOD, COLUMBIA & GULF RAILROAD COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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[Title omitted.]

In the District Court of the United States for the Jackson Division of the Southern District of Mississi

THE ILLINOIS CENTRAL RAILROAD COMPANY ET AL., PLAINTIFFS,

v.

THE UNITED STATES, DEFENDANT.

BILL OF COMPLAINT.

To said Court:

Your orators, the Illinois Central Railroad Company, a corporation duly chartered, organized, and existing under and by virtue of the laws of the State of Mississippi, wherein it has its legal domicile (hereinafter called Central Company), and the Fernwood, Columbia & Gulf Railroad Company (formerly Fernwood & Gulf Railroad Company), (hereinafter called the Fernwood Company), a corporation duly chartered, organized, and existing under and by virtue of the laws of the State of Mississippi, having its residence and legal domicile therefor in the town of Fernwood, county of Pike, State of Mississippi, suing on behalf of themselves and of other carriers affected by the order hereinafter complained of, who may desire to join herein and assume their proportional part of the costs and expenses, most humbly complain of the United States, and for cause of action state:

2 I.

Heretofore Swift Lumber Company, a corporation chartered, organized, and existing under the laws of the State of Mississippi, having its residence and legal domicile at Knoxo therein, in the Southern District, State of Mississippi, filed its certain complaint, which was amended and supplemented, before the Interstate Commerce Commission and numbered on the docket of said commission #10827, whereby and whereunder said Swift Lumber Company, suing upon behalf of itself alone, alleged upon the part of divers carriers, and especially of the complainants herein, a violation of sections 1, 2, and 3 of the interstate commerce act, copies of said petition being hereunto annexed, marked Exhibit "A" and made parts hereof as fully as if at length copied herein. Said petition was filed July 2, 1919, and it alleged that the rates on yellow-pine lumber from Knoxo to points in Louisiana and to points in central traffic territory, and other territory, were unjust and unreasonable in and of themselves; that said rates, so then in effect, were unjustly discriminatory against both the petitioner, said lumber company, and said locality, Knoxo, in this, that there was exacted for the movement of said yellow-pine lumber an arbitrary of 2c. over the rates contemporaneously in effect from points on the Illinois Central, the New Orleans Great Northern, and other lumber-line systems (in-

cluding their several branches), and that the exaction thereof by said Fernwood Company was in violation of said sections 1, 2, and 3 of said interstate commerce act.

3 II.

Said petition, so filed by said Swift Lumber Company, was thereupon answered by several of said carriers, especially said Central Company and said Fernwood Company, wherein thereby the said carriers denied that they individually or in conjunction with others published, maintained, and/or collected any rates that were either unreasonable, unjust, excessive, and/or unduly discriminatory for the transportation of yellow pine lumber, timber, and other sawmill products from Knoxo, Mississippi, to the interstate points more particularly set forth in said petition; and denied that either individually or collectively the carriers had, in any way, published or collected any rate in contravention of the act to regulate commerce. By said answers it was further set forth that the 2c. arbitrary over the junction point was not unjust or discriminatory against either Knoxo or the complainants. Respondents further denied that there was any blanket rate covering the territory wherein Knoxo was situated; and denied that the Illinois Central or the New Orleans Great Northern, being the only connections at that time of the Fernwood Company, have pursued a policy of naming the same rates from stations upon independently owned and operated short lines as were contemporaneously in effect upon their own system.

Specifically and severally the Fernwood Company set up that its line was a public carrier for hire, and that said Fernwood Company was not receiving for any operations of its road adequate revenue for the purpose of properly serving the public; that said Fernwood Company road was constructed solely to move to market

4 timber thereunto adjacent, and after being utilized therefor by those so owning timber will become without value and have to be junked, so that in addition to a reasonable revenue return upon said investment said Fernwood Company is entitled to create a reserve which, at the end of said lumbering operations, will vouchsafe to those who have invested in said securities a return of capital.

That, thus, the Fernwood Company is therefore entitled to assess against each of the parties utilizing its line for the transportation of timber to market an adequate depreciation charge to vouchsafe such capital return, but that up to this time, instead of so having said capital return vouchsafed, if the rates now in effect are reduced the result will be impairment of the Fernwood Company's financial condition to such an extent as to make receivership inevitable and dismemberment a question of but a short time, as has been the case actually with the Liberty White Railroad, which lies immediately north of said Fernwood line, east of the Illinois Central.

It was further alleged in said answer that if said road was constructed for the purpose of serving the public by bringing to market

timber adjacent to its line, and that without its said line being so constructed said timber was not available, and said timber thus made available is accessible with a return upon the capital investment to vouchsafe the capital return at the end of the operating period.

III.

Said carriers further averred that the rate structure in the territory in question had been in effect for many years, and that said Swift Lumber Company, the sole petitioner, was advised of its existence at the date of the establishment of his mill, and acquiesced therein; and averred that the additional charge necessary to haul said lumber to the main trunk line found expression in the price at which said Swift purchased said timber, in this, that it was less than the price paid for timber of the same kind and character adjacent to trunk lines.

The carrier denied that Swift is the only one charged a rate in excess of said alleged blanket rate averred to exist, but which does not exist in fact; and denied that said Swift was obliged to sell his product in markets in competition with practically the entire output of yellow pine in the group described; and the carriers averred that the prices are controlled largely by stumpage values, and that such values at such points as remote as Knoxo are lower than values at main line points, and that trunk line points have to take into consideration the cost of timber, which, the carriers aver, more than offsets the alleged discriminations arising in said rates.

To the supplemental petition full denials were likewise made. Copies of said answers are hereto annexed, marked Exhibit B 1, etc., and made a part hereof by adoption as fully as if copied herein.

IV.

That thereafter, in pursuance of the issues so joined, said cause was set down for hearing in the city of Chicago upon December 18, 1919, whereat were present the said Swift Lumber Company by its attorney, Hon. L. Palmer, the Central Company by its attorneys, and Fernwood Company by its attorneys, and thereupon, to sustain the issues in the cause made, said complainants introduced its witnesses, J. B. Kimball and L. Palmer; and said carriers introduced their witnesses, J. L. Sheppard, G. B. Auburtin, J. M. Fush, T. J. Quigley, and G. H. McElroy, and that the evidence then and there taken, with the several exhibits in support thereof, is hereunto annexed, marked Exhibit "C," and made a part hereof by reference as fully as if copied herein at length. That thereby epitomized it was shown:

1. The rate from Knoxo per se was not unreasonable, compared with similar rates contemporaneously in effect.

2. That said Knoxo was a station upon the Fernwood line, which was a single-line track railroad 32 miles long, Knoxo being located

27 miles east of Fernwood and six miles east of Tylertown, and that prior to May 21, 1906, rates from all points on the Fernwood line were made by adding the full local to Fernwood, plus the rate from Fernwood to destination, but effective that date rates were published from local points on the Fernwood line 2c. higher than those in effect from Fernwood. That the Illinois Central, with its affiliated companies, connected in this territory with eight short-line carriers, to none of which the junction-point rate extended, but that lumber moving from local points thereon took a rate from one (1) to 4½ cents higher than the junction-point rate; and that the general practice throughout the Mississippi Valley and the Southeast was to make rates from independently operated short lines by adding an arbitrary to the junction rate; it appearing that there were ninety-five short lines in the territory east of the Mississippi and south of the Ohio, and that on such short lines this rate structure existed on fifty-five, while on twenty-seven there was a combination of locals, whereas the junction-point basis applied only on thirteen, and as to those thirteen especial causes were applicable.

3. Swift Lumber Company wholly failed to show the unreasonableness of the rates.

7 4. Swift Lumber Company failed to show any act upon the part of the Fernwood Company whereby it had in any way, at any time, departed from its uniform practices of plussing the junction point rate, and that when the Great Northern road was constructed into Tylertown it received fourth section relief from the commission by reason thereof.

5. That said Swift Company made a specific contract to haul its tonnage over the line of the Fernwood Company at the rate then in effect (including said arbitrary) in consideration of the conveyance to it of certain rights of way and mill sites, in possession of which said Swift Company then was and still is enjoying the same in virtue of its contract.

6. Said Fernwood Company was constructed for the removal of timber situated in adjacent territory, over ninety per cent of its tonnage being such timber and timber products, and when said timber has been removed there would be no adjacent tonnage to take its place, as a result of which said road would have to discontinue operations, and thereby said Fernwood Company was and is entitled to allocate to each unit of timber therefrom removed a capital charge sufficient to retire its outstanding capital obligation when the timber operation ceased.

7. Said evidence is not in conflict to any material extent, and said complainant, Swift Lumber Company, wholly failed to meet the burden of proof upon it imposed, and, on the contrary, the carrier sustained each and every issue, and thereby became entitled to a dismissal of said petition.

8. The testimony clearly shows that the rate in question and under attack is not unreasonable, and further shows that this rate is

8 not discriminatory and does not in fact operate to the undue

or unreasonable preference or advantage of any person, company, firm, corporation, or locality, or any particular description of traffic in any respect whatsoever, nor does it subject any person, company, firm, corporation, or locality, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. No substantial testimony was offered, nor does there appear in the record any showing that the rate was unreasonable or operated to the disadvantage of any person or community.

Direct reference to said evidence is specifically made and the same integrated into this bill by reference, and is not set forth at length merely to save prolixity.

V.

That thereafter said cause was duly briefed by L. Palmer on behalf of said complainant and by counsel on behalf of the carriers, and copies of said briefs are hereto annexed, marked Exhibit "D" 1, etc., and made parts hereof, as if fully copied herein.

VI.

That thereafter the Hon. J. Edgar Smith, examiner, who heard the said cause, made his certain report, which was filed with the Interstate Commerce Commission upon the 29th day of March, 1920. A copy of said report is hereunto annexed, marked Exhibit "E" and made a part hereof as if fully copied herein. And thereunder J. Edgar Smith found that:

(1) That the rates in and of themselves were not shown to be unreasonable;

9 (2) That the rates were not shown to be unduly discriminatory either as against the shipper or as against the locality, and in virtue of the power in him vested, proposed that the commission should find that petition be dismissed and the petitioner denied reparation.

VII.

That thereupon said Swift Lumber Company excepted to said finding of fact and of law made by said Hon. J. Edgar Smith, examiner, as more fully appears by Exhibit "F," hereunto annexed and made a part hereof as fully as if copied herein, and by said exception, by reiterated and prior contentions, set forth in said original and supplemental petition, contending that said examiner should have found from the evidence:

(a) That said rates were per se unreasonable;

(b) That said rates were unduly discriminatory: 1st, as against the shipper, and 2nd, as against Knoxo, Mississippi, and

(c) That reparation should be awarded upon the basis of the supplemental petition.

VIII.

That likewise said Fernwood Company excepted to said report in so far as:

(a) It failed to find that a specific contract was made and entered into by and between said Swift Lumber Company and the predecessor in interest, the Fernwood Company, from which it was subsequently lawfully severed, whereunder and whereby, in consideration of a certain conveyance made, said Swift Lumber Company had assumed and undertaken to pay the arbitrary exacted, and that therefor had entered into a binding contract, the consideration whereof it still retained and enjoyed.

10 (b) And that in so far as said examiner failed to find that under the law there was a right in the Fernwood Company to allocate a capital retirement charge against each unit of timber removed, in virtue of the fact that said Fernwood Company was constructed but for the removal of a definite tonnage which, when removed, would necessitate its abandonment, and that the other tonnage was but an incident, and thereby its public use was limited both in time and in character, and in virtue of such limitation a capital return from the principal commodity served should have been given under the constitutional guaranty. Copy of said exceptions is hereunto annexed, marked Exhibit "G," and made a part hereof as if fully copied herein.

IX.

That thereafter said cause was duly argued before a division of the commission, consisting of Commissioners Hall, Daniels, and Woolley, upon the pleas and proceedings had and done, including said report, and the briefs there filed are hereto annexed, marked Exhibit "H" 1, etc., and referred to as fully as if set forth herein at length.

Complainants aver that all of said issues should have been found by the commission in favor of the carriers, and that the petition of said Swift Lumber Company should have been dismissed. But notwithstanding thereafter, upon April 5, 1921, when the commission was composed of eleven members, a decision was arrived at and published as of that date by five commissioners; three commissioners dissented and three commissioners, at the time of the publication of said decision, being on the commission, did not participate in the decision. So that said decision, a copy of which is hereunto annexed, marked Exhibit "I," was rendered by five commissioners, not

11 one of whom heard the oral argument of said cause before the commission, but two of those who dissented, to-wit, Commissioners Daniels and Hall, holding with the Hon. J. Edward Smith, examiner, did hear said oral argument and were thereby induced to confirm the contentions of the carriers. Commissioner Woolley who heard the oral argument had ceased to be a member of the commission at the date of decision.

X.

Complainants aver that under said decisions made by said five commissioners, dissented from by three, that the act to regulate commerce had been violated, and said decision and the order, in virtue thereof made, is in excess of the statutory power of said commission, and furthermore that said order is contrary to the Federal Constitution in this, that it deprives carriers of their property without due process of law and taxes their property for private use without due compensation in this, that the sole party complaining in said Swift Lumber Company *v.* The Fernwood & Gulf Railroad Company et al. was the said lumber company; and complaints aver that Swift Lumber Company located its plant upon the line of the Fernwood Company when the same was the property of the Fernwood Lumber Company, and thereafter when a segregation occurred by which said lumber company was divested from the railroad company, the railroad company, by virtue of such diversion, became entitled to have, demand, and exact that said Swift Lumber Company should do and perform its certain covenant and contract whereby it undertook and agreed to ship all of its output over said Fernwood line at the rates in effect, embracing and including said arbitrary, and that in consideration of such agreement, as
12 appears by the exhibits to said evidence so taken, said lumber company received valuable rights of way and other property in virtue of which it is now enjoying its facilities, and which, but for its contract so thus to remove its tonnage, it would not have been allowed to become the owner of.

XI.

Complainants aver that by making said contract said lumber company became estopped to complain of an alleged discrimination under sections 2 and 3 of the commerce act, because it had voluntarily, with knowledge, agreed to the exaction of the arbitrary as a consideration for the receipt by and to enjoyment of certain privileges to property; and having received and enjoyed such privileges and such property it was not competent, while so in the receipt and in the enjoyment thereof, to challenge as discriminatory that whereunto it had voluntarily assented, and in virtue of which assent obtained the benefit for its said business which it still enjoys under such agreement.

Complainants aver that said cause before the commission was instituted solely by said Swift Lumber Company, so thus circumstanced and situated, being cause #10,837; and complainants aver that the commission can not enter an order at the instance of a person estopped to seek relief as against carriers, even though relief might be granted where the parties seeking said relief were entitled to demand the same under the law.

Complainants aver that the possession by the petitioner of the right to file this petition at the date of its filing and the possession by such Swift Company of a right to challenge said rate structure was and is a condition precedent to the power of the commission to enter an order vouchsafing the alleged right so sought to be
13 asserted, and that an order made by the commission in a proceeding against the carriers wherein there is but one complainant and such complainant is estopped to question the fact complained of, is beyond the power of the commission, null and void, and the orders made therein wholly unenforceable.

Complainants aver that after the making of said order that a petition for a rehearing and a reargument was duly filed by all of the carriers interested, as shown by exhibit hereto marked Exhibit "J" 1, etc., and made a part hereof as fully as if copied herein; and that at the same time said Fernwood Company filed its separate several petition, likewise shown by said Exhibit "J" hereto annexed, thereunder seeking to have a rehearing and to vouchsafe to said company its statutory and constitutional rights more at length in this bill set up, all of which are prayed to be taken as a part hereof as fully as if copied herein at length.

These applications for a rehearing and a reargument were, however, by the Interstate Commerce Commission overruled and denied by its order entered on July 5, 1915, which, omitting the formal parts, reads as follows:

"Upon further consideration of the record in the above-entitled proceeding, and of the petitions for rehearing or reargument filed on behalf of the defendant, Fernwood and Gulf Railroad Company, and of all other defendants herein:

"It is ordered, That the said petitions be, and they are hereby, denied."

9. Complainants aver that the rates exacted from Knoxo, save those undoubtedly unreasonable by being a combination of locals, were found reasonable and just by the commission in and of themselves under the act to regulate commerce.

14 10. Complainant, the Fernwood Company, specifically avers that the line of the Fernwood Company was constructed solely, exclusively, and only for the purpose of conveying to market the timber and timber products upon that territory adjacent to the line of said road as now constructed; and that its other tonnage is only incidental, amounting to only about seven per cent; and avers that when said timber thereto adjacent is therefrom removed by said railroad company for the benefit of those owning said timber, that the principal public service of said Fernwood Company will cease, in virtue of it having accomplished the reason of its being. Complainant Fernwood Company avers that it has outstanding five hundred thousand ($500,000.00) dollars first-mortgage gold bonds, which are wholly unpaid, and are secured by a first lien upon its line of railroad. Said company avers that it has issued two hundred thousand ($200,000.00) dollars refunding mortgage bonds, which con-

stitute a second and subordinate lien but which are due and owing by it to persons who have lawful claims against it, and that said bonds issued for $200,000.00 was duly and regularly authorized to be made by it in virtue of the provisions of the transportation act of 1920; and in addition to said first and second mortgage bonds that it has outstanding one hundred thousand ($100,000.00) dollars of capital stock fully paid and non-assessable, representing an actual out-of-pocket capitalized property account aggregating eight hundred thousand ($800,000.00) dollars; that said $800,000.00 so thus represented has been invested for the use of the public in a property solely utilized in the transportation of timber adjacent to market, and that its public function is to overcome a place disadvantage of the timber located along its line, and that when such place disadvantage has been overcome for the owners of said timber
15 and said timber being removed to market that there will be no adequate tonnage for its line to haul, and its period of usefulness will be at an end, and that its death as a commercial enterprise will occur, in virtue of a coordination which coordinated its public function with the removal of said timber. Said Fernwood Company specifically avers that under the Constitution it is entitled to have a return upon the property devoted to the public use, and also to create a capital retirement reserve equal to $800,000.00 in virtue of the devotion of that amount to the specific public use of bringing to market said tributary timber; and that it is entitled to levy against such tributary timber a rate or charge for the transportation in addition to what would otherwise be charged, so as that when said timber has all been removed and the road ceased to exist its projectors will receive a return of the capital in it invested from the tonnage it was built to serve.

Said Fernwood Company avers that to thus devote its property to such public use gives the public a right to so use said property, but upon the express condition that just compensation shall be therefor made. That neither the public nor any of its component parts is compelled to use its property so thus devoted, but if used the attendant condition must be complied with, and that this company is entitled to such rates as will fairly compensate it for the services rendered, and for depreciation of its property included in such service, even though in so doing it reach the vanishing point. In other words, the Fernwood Company, under the Constitution, is allowed to come out even in an understanding such as exhausts the value of the property, and in addition is entitled to receive a fair compensation for the services when being rendered, and that no carrier ought to be compelled to sacrifice its plant and be
16 content merely with compensation amounting only to interest. To ignore this principle would be to violate the fifth amendment, and no public service corporation can be expected to sacrifice its property for public use without compensation therefor made; and it is entitled to earn not only what will meet current repairs but to provide a means of replacement when it ceases to be of value. A

fully equipped railroad built on a circle within a radius of one hundred miles from the North Pole would be, at the present day, utterly valueless; there would be no traffic. And differing only in degree will be the railroad of the Fernwood Company, running into a logged-off barren, where there will be nothing for it to haul and no use to which it could be put. The Fernwood Company avers that the failure to provide against the loss incident to depreciation, depletion, and obsolescence has been the undoing of more enterprises than any other single cause, and that under the Constitution a carrier, circumstanced as it is, has a right to exact, under the fifth amendment, a capital return reserve to be imposed against each timber unit removed from the tributary territory. And complainants aver that said commission, when they failed to give effect to this right, thus vouchsafed under the Constitution, exceeded the statutory powers, invaded the constitutional rights, and the order made therefor was void.

XII.

Complainant, Fernwood Company, is the owner of a single track road, of standard gage, extending from a connection with the Illinois Central at Fernwood eastwardly, and a junction with the New Orleans Great Northern at Tylertown; thence of twenty-seven miles; and thence further eastward to a junction with the Gulf & Ship Island and the New Orleans Great Northern at Columbia, Mis-
17 sissippi. Prior to 1908 the only trunk-line connection of said Fernwood Company was the Central Company, and prior to May 21, 1906, lumber rates from all points on its lines to all destinations were made by combining its full local rates to Fernwood and the rates beyond. Effective this date, however, rates were published from local points which were 2c. higher than the rates from Fernwood, and this is the present basis for joint rates to the Ohio River and points beyond. The excess over the junction-point rate, in all cases, accrues to the Fernwood Company in addition to the division which it receives out of the joint rates. Complainant, Fernwood Company, avers that it has never named a lumber rate to the territory covered by the order here attacked other than in accordance with the principle of adding to the junction-point rate a reasonable amount for the overcoming of the place disadvantage, and that it has been forced, where its line joined the Illinois Central and the New Orleans Great Northern and the Gulf & Ship Island roads, to make from these points, but from none other, a rate to the territory here in controversy not exceeding the rate then exacted from said points by its competitors, said trunk lines.

Said Fernwood Company avers that it is an independently owned and operated line, not affiliated with, controlled by, or dictated to by any of its connections. And avers that under the act to regulate commerce and the fifth amendment and the Federal Constitution its individualization cannot be merged into a policy by connecting carriers whose interests are adverse and whose policies are constructed

for their own conservation, even though in so being they involved the disorganization and destruction of the Fernwood Company. It avers that under the Constitution the public has no right to become its general manager, save and except in so far as it may vio-
18 late the law, but that its individualization, its separate policies, promotive of its welfare, lie beyond the constitutional power of the commission, and it cannot be thereof deprived in virtue of the consummation of a theory of the commission, which it avers has no foundation in the fundamental facts thereunto applying. And it avers that the order of the commission, whereby its individualization is sought to be merged into a conformity with the alleged policy of its competitors, is unauthorized by the act to regulate commerce, and is in violation of the fifth amendment to the Federal Constitution.

XIII.

Complainant, said Central Company, avers that it has eight (together with its affiliated companies) independent short line carriers connecting with it, and that to none of them does said alleged blanket rate extend. And that beginning at a point on the Mississippi River, extending thence east to Norfield, Mississippi, thence east to the Pearl River, thence south to the Gulf of Mexico, thence to the mouth of the Mississippi River, thence up said river to the point of beginning, there is a territory in which there has never been a blanket rate covering independently operated short lines, but that each independent short line in said territory has, in virtue of its individual discretion, plussed the junction point rate to the extent of from one to four and five tenths cent, and from said short lines so in said territory there has never been, and is not now, in effect a uniform blanket rate, and the rates there in effect have been established by the individual decisions of each of the carriers, and not by a coordinated effort of the blanketing, and by reason thereof no power exists in the commission to destroy the individualization existing, by attempting the enforcement of rates, when such
19 individualization has been persistently maintained by the carriers' services, and thereunder, satisfactorily, has been removed nearly seventy-five per cent of the lumber tonnage. In short, the individualization of lumber rates by the several carriers heretofore and now existing does not warrant in this territory an order of the commission taking away from the carriers their individual right of coordinating rates for their own welfare when said carriers will thereby be deprived of their property without due process, and have their property taken for private use without due compensation.

XIV.

Complainants aver that the commission is without power in the southeastern territory to promulgate a general policy eliminating the plussing of junction point rates by independently owned and operated short-line carriers. Complainants aver that there are

ninety-five such carriers in the territory east of the Mississippi River and south of the Ohio River, and that the rates on lumber from local points on these roads have arbitraries added in fifty-five cases; in twenty-seven cases they are made on a combination of locals; while in thirteen cases is there in effect the junction point rate; and complainants aver that in nearly all, if not all, of said thirteen cases there are special reasons existing whereunder and whereby said junction point rates are projected; and aver that in each and all of said cases said short-line carriers asserted, and have asserted, the right so thus to fix as individual acts either the junction point rate or an arbitrary thereover, and that it is beyond the power of the commission to promulgate, as is here sought to be done, a general principle, to be made enforceable throughout the United States, whereby short line independently operated
20 railroads will be compelled to coordinate the rates to the junction point rates, and the result will be either that the short lines will receive wholly inadequate revenue by losing the arbitraries collected, which were absolutely essential to their maintenance, or the trunk lines will be compelled to increase divisions, so as to vouchsafe adequate revenue to the independent short lines, either of which alternative will result in an injustice to the respective parties. And complainants aver that so thus to reduce rates at the present time would be in violation of the transportation act of 1920, and the Constitution of the United States, fifth amendment, in this, that the revenue now received by complainants for the rendition of the services is not commensurate with those whereunto complainants are entitled under the transportation act or under the Federal Constitution. And complainants aver that such elimination of the revenue, properly chargeable to those localities upon short lines, and the compelling of those localities on main lines to absorb the same, is beyond the power of the commission, especially when, as here, said parties located on said short lines receive a distinct advantage in the cost price of its stumpage, which reflected the place of disadvantage on said short-line roads. And now to compel those parties who own said trunk lines to absorb for the benefit of such short-line shippers, this place disadvantage, reflected in the purchase price of property, is an unjust, unreasonable, and unlawful transaction, and beyond the power of the commission, both under the interstate commerce act and transportation act and the Federal Constitution.

XV.

Complainants aver that said commission was further without power to enter said order coordinating the rates upon the in-
21 dependent short lines with the rates existing upon the trunk lines and their branches, because complainants say that none of said trunk lines reach Knoxo, Mississippi, and that the Fernwood Company is the only company therefrom moving yellow pine tonnage, and that said movement is at rates that are reasonable in

and of themselves; and that the rails of the Fernwood Company are the only rails reaching said Knoxo, and that at no point upon said line, save where competition otherwise fixes the rate, is there a rate now in effect otherwise than the junction point rate plus the arbitrary; and complainant, Fernwood Company, has, in each instance, consistently plussed said junction point rates from all of its stations, and this plussing was done by said Fernwood Company in virtue of its individual operation of its independent short line; and complainants aver that it is not within the power of the commission to coordinate the rates of one carrier to and with the rates of another and distinct carrier; nor is it within the power of the commission to admeasure the rates to be charged by one carrier for services on its line with those upon other and differently situated lines, and compel each line, when the rates thereon charged are reasonable, to observe the rates promulgated by its competitors. Complainants aver that competitors are not thus under the law given the right to control individual, independent rates of carriers, but that under sections 2 and 3 an election is given each and every carrier as to whether or not it will meet competitive rates; and its election to meet competitive rates at points where such rates are in effect does not thereby discriminate against those points where such competitive rates do not exist, by reason of the fact that the carrier naming such rates does not have its lines running thereto. Complainants aver that it is beyond the power of the commission to eliminate individual action of each carrier and make each in-
22 dividual action conform to the rates promulgated by competitors and thereby deprive individual carriers of those powers of direction whereunder they may conserve the individual carrier's welfare, and that such a policy, if universally adopted, would forthwith destroy the independence of every carrier, and make the usual rate named by the shortest line carrier controlling in admeasuring the compensation for the services to be performed; and thus to vest the control of a carrier in its competitor, as is sought to be done by the order here, is contrary to the interstate commerce act, the transportation act, and the Federal Constitution.

XVI.

Said Central Company has consistently pursued a policy whereby it has refrained from making effective from points upon independently operated short lines the same rates as were contemporaneously in effect from its own station. That said policy of said Central Company has been universal and consistent, and that no discrimination has been made by said Central Company in favor of any place located upon any independent short-line connection; and that said Central Company has never attempted to establish, as to such stations, said located upon independently operated short lines, any rate, whatsoever, but has consistently refrained from at-

tempting to make rates from all stations, and has but done nothing more than conserve its own revenues by making effective from the territory served by it individually such rates as would vouchsafe the movement of tonnage requisite to insure the prosperity of dependent industries; and said Central Company says that it is beyond the power of the commission, by said order, to thwart this fundamental policy, continued from time out of mind by the Central Com-
23 pany, and compel it to coordinate its theory of proper rate making to a hypothesis now sought to be converted into a theory by the commission through the promulgation of orders similar to that herein sought to be made.

XVII.

Complainants aver that for the services rendered in the transportation of lumber at the present rates, with the convertible value of money, that the rate upon lumber is lower, and to further reduce it by the elimination of the arbitrary would be to deprive complainants of their property without due process of law and compel them to render a service for said shippers at a lower figure than that which, under the Constitution, they are entitled to exact, in view of the provisions of the transportation act.

XIX.

Complainants further aver that said order is not based upon any substantial evidence which will support and justify it, since all of the evidence offered shows that the rate in question does not discriminate against either persons or localities, nor does it subject any person or locality to any unreasonable prejudice or disadvantage. The finding of the commission is based upon discrimination. As shown in the report of the commission, the only discrimination which is even suggested as ground for making the order grows out of the fact that the Illinois Central Railroad extends the junction-point rates to points on the Mississippi Central Railroad and participates in certain through rates on lumber originating on certain small railroads, to wit, the Alabama & Mississippi Railroad, the Mississippi & Western Railroad, the Cybur & Northern Railroad, and the Pearl River Valley Railroad. Complainants show that all the testi-
24 mony offered in this case clearly indicates that the conditions surrounding the making of rates to points on the Mississippi Central Railroad are entirely different from those that attend the making of rates from Knoxo, the point involved in this case, and that the Illinois Central Railroad in extending junction-point rates on the Mississippi Central acted under the force of compelling competition, and could not therefore be guilty of discrimination, and that this action can not constitute discrimination as against Knoxo. So far as the other short-line railroads mentioned in the commission's decision are concerned, no one of them is a connection of the Illinois Central or of the Fernwood, Columbia & Gulf Railroad, and these

complainants can not therefore in any sense be responsible for rates which prevail on those roads. The complainants show, therefore, that the order of the commission basing its finding upon discrimination has no substantial support in the evidence is therefore beyond the authority of the commission to make, and is consequently null and void.

XX.

An examination of the commission's opinion in this case shows that it based its conclusion very largely upon another case formerly decided by the commission, that being the case known as McGowan-Foshee Lumber Company v. F. A. & G. Railroad Company, 43 I. C. C. 581. It is evident from the examination of the commission's report and from the testimony offered in the present case that the commission decided this case not upon the testimony offered in this record but in pursuance of a policy which it had adopted covering all roads in the Southeast, and which was first announced in the said McGowan-Foshee case, that policy being to force into effect from points or short-line railroads rates not higher than from junction points, regardless of the peculiar conditions that surround the particular roads involved in the particular controversy. In other words, complainants assert that the decision in this case is not based upon the facts disclosed by the record, but is in pursuance of a certain policy adopted by the commission, based on facts which were developed in other cases and which have no application to the case in hand. Complainants point out that by the order of the commission the rates from Knoxo are ordered to be placed on the same basis as the rates from junction points Fernwood and Tylertown, yet nowhere in the commission's decision is there any finding that the rate from Knoxo is discriminatory as compared with the rates from Tylertown and from Fernwood. The commission's whole opinion is based upon the theory that discrimination exists by reason of rates in effect from Mississippi Central points and from points on the other short line railroads mentioned in the commission's decision. No opportunity, however, is given to remove the discrimination by increasing rates from points on the Mississippi Central and points on the other short lines, the only option being to increase the junction point rates from Tylertown and Fernwood, or lower the rate from Knoxo to the junction point basis. The opinion of the commission is therefore illogical and has no substantial support in the testimony.

XXI.

Complainants further aver that said order is contrary to the law and in violation of the powers conferred upon the commission in this, that said rate, so exacted, is not discriminatory within the purview of said act under the record made before said commission either (a) as to the shipper or (b) as to the point of shipment. And that

said record shows absolutely no discrimination within the condemnation of the statute, and said order, seeking to adjudicate a discrimination under the record herewith submitted, goes beyond the statutory and constitutional power of the commission, and is, for that reason, void.

XXII.

Complainants further aver that said commission erred in its interpretation of the law in holding that there was (a) a discrimination as to the shipper and (b) a discrimination as to the place of shipment, by the enforcement of the arbitrary, under the individual policy of a shipper upon whose lines the shipper and place of shipment were located, when said shipper and place of shipment were not located upon, or accessible to, any other rails than those of the Fernwood Company.

XXIII.

Complainants aver that the commission is here seeking to create a general elimination of individual action by short carriers, and seeking to control the rate structure by those contemporaneously in effect on lumber trunk lines, and that such action is beyond the power of the commission in the premises.

XXIV

Complainants aver that irreparable damage will accrue from the enforcement of said order by the commission, but that notwithstanding the foregoing said commission has ordered that said rate structure be coordinated and the arbitraries eliminated, and that from and after September 5, 1921, that the rates on lumber from
27 Knoxo be the same as those contemporaneously in effect from Fernwood and Tylertown, and that, unless and except this order be enjoined and restrained by this honorable court, irreparable injury to complainants will accrue.

XXV.

Complainants aver that said order, made upon April 5th and thereafter succeeded, as shown by Exhibit —— hereto annexed and made a part hereof as if fully copied herein, is absolutely null and void for the reasons hereinbefore set forth, but that unless enjoined and restrained the same shippers will compel the complainants to conform thereto and thereby irreparably damage the carriers through the unconstitutional order above made, through the, if not unconstitutional, void order, in excess of constitutional power, by said commission assumed to be made. That there is no plain, adequate, and complete remedy at law. That the shippers who would exact the performance are in large measure insolvent; that there would be a

multitude of suits over trifl'ng amounts, which, when collected, would substantially be consumed in the cost of collection. That complainants are in dire need of the revenue, and if the order is valid they can be made to refund to whomsoever may be thereunto lawfully entitled, but if said order is allowed to go into effect, and it is void, then said complainants will be forever deprived of the revenue therefrom lawfully due, because the costs of the collection will be in excess of the amounts received, even if any amount whatsoever is received, because of the insolvency of the shippers and the uncertainty as to whom the liability therefor attaches. That the sole remedy therein is by injunction.

Premises considered, complainants pray that the parties
28 named in the caption hereof be made parties defendant hereto and that they be required to plead, answer, or demur, but answer under oath is expressly waived; that said order made in pursuance of the opinion of the commission of date April 5, 1921, be annulled and set aside and for naught held, a copy of the same being annexed hereto as a part hereof, and also the order postponing the effective date thereof to September 5th, this being a direct attack thereon; and that restraining order be issued herein, restraining the defendants from making said order effective, in any way, or to any extent whatsoever, and thereby preventing irreparable damage therefrom accruing; and that a temporary injunction, which shall upon final hearing be made perpetual, enjoining, restraining, and annulling said order of April 5, 1921, and all other orders extending the said order of April 5, 1921; and that complainants be given such other, further, and general relief as in equity and good conscience may seem meet.

And as in duty bound, etc.

Attorneys for Plaintiffs.

29 STATE OF MISSISSIPPI,

County of Pike, Town of Fernwood, ss:

Personally appeared before me, the undersigned officer, the within named Fush, who having been by me first duly sworn, states that he is the general auditor of the Fernwood, Gulf & Columbia Railroad Company, which is a corporation duly chartered, organized, and existing under and by virtue of the laws of the State of Mississippi, and that he was personally present at the time of the taking of the testimony in this cause in Chicago, be-*be*fore Examiner J. E. Smith, and is personally familiar with this controversy in all of its aspects, and upon such familiarity states that the foregoing facts set forth in the original bill herein are true and correct and accurate in so far as stated upon his own personal knowledge; and that things therein appearing to be stated upon information and belief, he verily believes to be true, upon his own personal information and belief.

Sworn to and su'scribed before me, this —— day of August, 1921.

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30 *Exhibit A to bill of complaint.*

Before the Interstate Commerce Commission.

SWIFT LUMBER COMPANY, COMPLAINANT,
vs.
FERNWOOD & GULF RAILROAD COMPANY, WALKER D. Hines, Director General, et al., defendants.

10827.
Jul. 2, 1919.

COMPLAINT.

L. PALMER,
Attorney for Complainant,
606 Commercial Place, New Orleans, La.

31 Before the Interstate Commerce Commission.

SWIFT LUMBER COMPANY, COMPLAINANT,
vs.
FERNWOOD & GULF RAILROAD COMPANY,
Walker D. Hines, Director General.

And the following-named carriers, designated, respectively, as "controlled lines" and "noncontrolled lines":

CONTROLLED LINES.

Illinois Central Railroad Company; The Yazoo & Mississippi Valley Railroad Company; New Orleans Great Northern Railroad Company; Gulf, Mobile & Northern Railroad Company; Mobile & Ohio Railroad Company; Southern Railway Company; New Orleans & Northeastern Railroad Company; Alabama Great Southern Railroad Company; The Alabama Northern Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; Alabama & Vicksburg Railway Company; The Atchison, Topeka & Santa Fe Railway Company; Atlantic City Railroad Company; Ann Arbor Railroad Company; Ashland Coal & Iron Railway Company; Atlantic Coast Line Railroad Company; The Baltimore & Ohio Railroad Company; The Baltimore & Ohio Southwestern Railroad Company; Bessemer & Lake Erie Railroad Company; Boston & Albany Railroad Company; The New York Central Railroad Company, lessee; Boston & Maine Railroad and J. H. Hustis, temporary receiver; Buffalo & Susquehanna Railroad Corporation; Buffalo, Rochester & Pittsburgh Railway Company; Central Indiana Railway Company; Central New England Railway Company; The Central Railroad Company of New Jersey; Central Vermont Rail-
32 way Company; The Chesapeake & Ohio Railway Company; The Chesapeake & Ohio Railway Company of Indiana; The Chicago & Alton Railroad Company; Chicago & Eastern Illinois Railroad Company and Thomas D. Heed, receiver; Chicago & North

Western Railway Company; Chicago Great Western Railroad Company; Chicago, Indianapolis & Louisville Railway Company; Chicago Junction Railway Company; Chicago, Kalamazoo & Saginaw Railway Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago, Milwaukee & Gary Railway Company; Chicago, Peoria & St. Louis Railrod Company and Beuford Wilson and Wm. Cotter, receivers; Chicago, St. Paul, Minneapolis & Omaha Railway Company; Chicago, Terre Haute & Southeastern Railway Company; The Chicago, Rock Island & Pacific Railway Company; The Cincinnati, Lebanon & Northern Railway Company; The Cincinnati Northern Railroad Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Coal & Coke Railway Company; Cumberland & Pennsylvania Railroad Company; The Cumberland Valley Railroad Company; The Cincinnati, Indianapolis & Western Railroad Company; Chicago, Burlington & Quincy Railroad Company; The Delaware & Hudson Company; The Delaware, Lackawanna & Western Railroad Company; Detroit & Toledo Shore Line Railroad Company; Detroit, Toledo & Ironton Railroad Company; Duluth, South Shore & Atlantic Railway Company; Detroit & Mackinac Railway Company; Detroit, Bay City & Western Railroad Company; Elgin, Joliet & Eastern Railway Company; Erie Railroad Company; Evansville & Indianapolis Railroad; Fort Dodge, Des Moines & Southern Railroad Company; The Gettysburg & Harrisburg Railway Company; Grand Trunk Western Railway Company; Grand Rapids & Indiana Railway Company; The Great Northern Railway Company; Greenwich & Johnsonville Railway Company; The Hocking Valley Railway Company; Indiana Harbor Belt Railroad Company; The Interstate Railroad Company; The Kanawha & Michigan Railway Company; Kewaunee, Green Bay & Western Railroad Company; Kentucky & Indiana Terminal Railroad Company; The Lake Erie & Western Railroad Company; The Lehigh & Hudson River Railway Company; Lehigh & New England Railroad Company; Lehigh Valley Railroad Company; The Long Island Railroad Company; Little Kanawha Railroad Company; Louisville & Nashville Railroad Company; Louisville, Henderson & St. Louis Railway Company; Litchfield & Madison Railway
33 Company; The Lorain, Ashland & Southern Railroad Company; Maine Central Railroad Company; Maryland, Delaware & Virginia Railway Company; The Michigan Central Railroad Company; Mineral Range Railroad Company; The Minneapolis & St. Louis Railroad Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Missouri Pacific Railroad Company; The Monongahela Railway Company; Montpelier & Wells River Railroad; Nashville, Chattanooga & St. Louis Railway Company; New Jersey & New York Railroad Company; The New York Central Railroad Company; The New York, Chicago & St. Louis Railroad Company; The New York, New Haven & Hartford Railroad Company; New York, Ontario & Western Railway Company; New York, Philadelphia & Norfolk Railroad Company; New York, Susque-

hanna & Western Railroad Company; Norfolk Southern Railway Company; Norfolk & Western Railway Company; The Northern Ohio Railway Company; Northern Pacific Railway Company; The Pennsylvania Railroad Company; The Pennsylvania Railroad Company, Western Lines; Pere Marquette Railway Company; Philadelphia & Reading Railway Company; The Philadelphia, Newton & New York Railroad Company; The Pittsburgh & Lake Erie Railroad Company; Pittsburgh, Chartiers & Youghiogheny Railway Company; The Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company; Peoria Railway Terminal Company; Pontiac, Oxford & Northern Railroad Company; Richmond, Fredericksburg & Potomac Railroad Company; Rutland Railroad Company; St. Johnsbury & Lake Champlain Railroad Company; St. Louis-San Francisco Railway Company; St. Louis Southwestern Railway Company; Schoharie Valley Railway Company; Stony Creek Railroad Company; Susquehanna & New York Railroad Company; Seaboard Air Line Railway Company; Tennessee Central Railroad Company, and W. K. McAllister, receiver thereof; The Toledo & Ohio Central Railway Company; Toledo, Peoria & Western Railway Company, and E. N. Armstrong, receiver thereof; Toledo, St. Louis & Western Railroad Company, and W. L. Ross, receiver thereof; The Ulster & Delaware Railroad Company; The Virginian Railway Company; Wabash Railroad Company; Washington Southern Railway
34 Company; Waterloo, Cedar Falls & Northern Railway Company; Western Maryland Railway Company; West Jersey & Seashore Railroad Company; The Wheeling & Lake Erie Railway Company; The Zanesville & Western Railway Company.

NON-CONTROLLED LINES.

Arcade & Attica Railroad Corporation; The Akron, Canton & Youngsto'n Railway Company; Arcadia & Betsy River Railway Company; Bloomsburg & Sullivan Railroad Company; Boyne City, Gaylord & Alpena Railroad Company; Cadiz Railroad Company; Central West Virginia & Southern Railroad Company; Chesapeake Western Railway; Chicago & Illinois Midland Railway Company; Chicago & Illinois Western Railroad; Cornwall Railroad Company; Coudersport & Port Allegany Railroad Company; Dansville & Mount Morris Railroad Company, and A. S. Murray, receiver thereof; The Delaware Valley Railway Company; The East Jordan & Southern Railroad Company; Fonda, Johnstown & Gloversville Railroad Company; Genesee & Wyoming Railroad Company; Grafton & Upton Railroad Company; Ironton Railroad Company; Kalamazoo, Lake Shore & Chicago Railway Company; Louisville & Jeffersonville Bridge & Railroad Company; Manistee & Northeastern Railroad, and the Michigan Trust Company, receiver thereof; Marion & Rye Valley Railway Company; Maryland & Pennsylvania Railroad Company; Montour Railroad Company; Mount Jewett, Kinzua & Riterville Railroad Company; Morristown & Erie Railroad Company; New Jersey, Indiana & Illinois Railroad Company; New York &

Pennsylvania Railroad Company; The Pennsylvania & Atlantic Railroad Company (Union Transportation Company, lessee); The Pittsburgh, Shawmut & Northern Railroad Company, and F. S. Smith, receiver; The Pittsburgh, Lisbon & Western Railroad Company; Prattsburg Railway Corporation; Rahway Valley Railroad Company; Rapid Railroad Company; Raritan River Railroad Company; Reynoldsville & Falls Creek Railroad Company; St. Louis & Hannibal Railroad Company; The Tuckerton Railroad Company; Traverse City, Leelanau & Manistique Railroad Company;
35 Unadilla Valley Railway Company; Virginia Southern Railroad Company; The Wabash, Chester & Western Railroad Company, and J. Fred Gilster, receiver thereof; Western Allegheny Railroad Company; West Virginia Northern Railroad Company; Wharton & Northern Railroad Company; Williamsport & North Branch Railroad Company, and Edw. Bailey, receiver; The Youngstown & Ohio River Railroad Company, defendants.

Complaint.

To the honorable the Interstate Commerce Commission:

The complaint of the Swift Lumber Company, complainant, respectfully shows:

I.

That complainant is a corporation, organized under the laws of the State of Mississippi, and engaged in the business of manufacturing lumber, with its principal office and place of business at Knoxo, Miss., a station on the line of the Fernwood & Gulf Railroad Company.

II.

That the defendant, Walker D. Hines, is the duly appointed and acting Director General of the United States Railroad Administration, acting for and on behalf of the President of the United States in the control and management of the railroad lines of the several railroad companies above named and referred to as "controlled lines," under and by virtue of the authority vested in the President by act of Congress approved March 21, 1918. That said "controlled line" railroad companies as so operated, which complainant asks
36 be considered as formal parties defendant hereto, and said director general as operating same, are engaged in business as common carriers of passengers and freight for hire, solely by railroad, between points in the State of Mississippi and points in various other States; and as such common carriers are subject to the provisions of the act to regulate commerce, approved February 8, 1887, and acts supplementary thereto and amendatory thereof.

III.

That the Fernwood & Gulf Railroad Company and the railroad companies above named, designated as "noncontrolled lines," are

each common carriers engaged in the transportation of passengers and property for hire, wholly by railroad, in interstate commerce, and particularly between points in the State of Mississippi and points in various other States; and as such are subject to the act to regulate commerce, approved February 8, 1887, and acts supplementary thereto and amendatory thereof.

IV.

That the said defendants above named publish, maintain, charge, and collect unreasonable, unjust, excessive, and unduly discriminatory rates for the transportation of yellow pine lumber, timber, and other sawmill products (carloads) from said station of Knoxo, Miss., to interstate points, and more particularly to points in the States of Louisiana, Tennessee, Kentucky, Virginia, Maryland, Delaware, New Jersey, New York, Massachusetts, Connecticut, Rhode Island, Maine, New Hampshire, Vermont, Pennsylvania, West Virginia, Ohio, Indiana, Michigan, Illinois, Wisconsin, Minnesota, Iowa, and Missouri and the District of Columbia, in this, that in the general adjustment of rates on yellow pine lumber from the territory adjacent to said station of Knoxo, Miss., to points in the said States named, the same rates apply from all points, with the exception of Knoxo and a few other points, within a territory or group extending from the Gulf of Mexico on the south to
37 Jackson, Miss., and the line of the Alabama & Vicksburg Railroad and beyond on the north, a distance of about 200 miles, and from the Mississippi River on the west to the main line of the Mobile & Ohio Railroad on the east, a distance of approximately 200 miles. That said station of Knoxo, Miss., where complainant's sawmill is located, is situated on the Fernwood & Gulf Railroad, 6 miles east of Tylertown, Miss., the junction of said Fernwood & Gulf Railroad with the New Orleans Great Northern Railroad, and 27 miles from Fernwood, Miss., junction with the Illinois Central Railroad; and rates from said station of Knoxo are uniformly 2 cents per 100 pounds higher than from said stations of Tylertown and Fernwood, which are the same as from all other points in the group above described, except to certain destinations, where through rates are in effect from Tylertown and Fernwood, but none are in effect from Knoxo. Complainant shows that the relation of yellow pine lumber rates from Knoxo to rates from other points in said territory obtains as to a very large number of destinations, comprising the principal markets for such lumber, which destinations are too numerous to set out or describe in detail herein; but there is attached hereto, marked Exhibit A and made a part hereof, an analysis of the rates in effect to some of the principal points and territories of destination illustrative of the situation as a whole.

Complainant shows that said group rates apply from points of origin involving materially longer hauls than from Knoxo, and that such rates are reasonable maximum rates to apply from Knoxo,

and that the existing rates from Knoxo are unreasonable, unjust, excessive, and unlawful to the extent that they exceed such reasonable maximum rates.

V.

Complainant shows that the said adjustment, above described, of rates on yellow pine lumber from Knoxo, Miss., is unduly dis-
38 criminatory against said station of Knoxo and against complainant, and unduly favors competing sawmills and points located on the rails of the above-named connections of said Fernwood & Gulf Railroad and on the rails of other carriers similarly situated to said Fernwood & Gulf Railroad. In further explanation of its allegation of discrimination, complainant shows that the Fernwood & Gulf is what is known as a short line, or tap line, built and owned by persons primarily engaged in the manufacture of yellow pine lumber, and extends in a general east and west direction to a junction with its two connections above named, which, like other lines leading from said territory to the markets, extend in a general north and south direction. That within the territory above described there are other short lines, or tap lines, owned under a community of interest with lumber manufacturing companies which are accorded from their local stations the same rates to the market territories in the States above named as apply from the junctions with their trunk-line connections. In specific illustration of such discrimination, complainant has incorporated in its Exhibit A, above referred to, a statement of the relationship of the group rates therein set forth with those from points on the said Fernwood & Gulf Railroad and from points on the Mississippi Central Railroad. Complainant shows that the transportation and traffic conditions surrounding the shipment from points on said Mississippi Central are substantially the same as from the Fernwood & Gulf Railroad, in that the Mississippi Central is also owned and controlled by persons primarily engaged in the manufacture of yellow pine lumber; that it is an east and west line, and depends upon its north and south connections to reach the lumber markets, and is located in close proximity to the Fernwood & Gulf. Complainant shows that it is what is known as an independent sawmill operator, and has no connection with the lumber interests which control said Fernwood & Gulf Railroad.

That the group or trunk line basis of rates to many of the
39 destinations above described applies from points on other short lines within the territory described, particularly from points on the Alabama & Mississippi Railroad, the Mississippi & Western Railroad, the Cybur, Gulf & Northwestern Railroad and the Pearl River Valley Railroad, in connection with their trunk line connections, which participate in the rates from points on the Fernwood & Gulf Railroad; and that the assessment of rates from Knoxo on the basis of said 2-cent arbitrary higher than such group rates unduly discriminates against complainant and unduly favors its competitors located on the rails of the trunk lines and other short lines in said adjacent territory.

VI.

Complainant shows that by reason of the facts above set forth it has been and is subjected to the payment, on its shipments of yellow pine lumber, timber, and other products of said mill, from said station of Knoxo, Miss., to interstate destinations, rates which were when exacted and still are unreasonable, unjust, and excessive, in violation of section 1; unduly discriminatory against complainant, in violation of section 2, and unduly preferential to other shippers and localities, in violation of section 3, of the act to regulate commerce.

VII.

Complainant shows that during the period of two years last past it has been and is continuing to make shipments of its products to interstate points on which it has been and is being charged the aforesaid unreasonable, unjust, excessive, discriminatory, and preferential rates. That complainant's product is similar and identical in character with that of other yellow pine mills in the territory above described, and it competes with such other mills in all the market territory above described. That with the exception of one other small sawmill the mill of complainant is the only yellow pine sawmill in all such territory whose products are charged in excess of the uniform group or blanket rates applying from said territory of origin to the several destinations above described, and that it is obliged to sell its product in such markets in competition with practically the entire output of yellow pine in the originating group described at prices which are influenced by the competition of such other mills among themselves and the rates of freight which they are charged to such markets; and that complainant has suffered and is suffering losses by reason of and to the extent of the greater rates which it is compelled to pay on its shipments over those paid by its said competitors. Complainant shows that by reason of the fact that such discrimination is a continuing one it is unable to make complete statement of its losses by reason thereof, but prays that it be permitted to make proof of such loss on the hearing hereof, and of the amount of such loss thereafter, and that it be awarded reparation therefor in such sum as may be found due to it.

Wherefore complainant prays that defendants may be severally required to answer the charges herein; that after due hearing and investigation an order be made commanding the said defendants and each of them to cease and desist from the aforesaid violations of the act to regulate commerce, and establish and put in force and apply in future to the transportation of yellow pine lumber and timber between the origin and destination points named in Paragraph IV hereof, in lieu of the rates named in said paragraph, such other maximum rates as the commission may deem reasonable and just; and also to pay to complainant by way of reparation for the unlawful charges hereinbefore alleged such sum as, in view of the evidence to be adduced herein, the commission shall determine that

complainant is entitled to as an award of damages under the provisions of said act for violation thereof; and that such
41 other and further order or orders be made as the commission may consider proper in the premises.

SWIFT LUMBER COMPANY,
Complainant.

(Signed) By L. PALMER, *Attorney.*

Exhibit A to Exhibit A to bill.

Rates on yellow pine lumber and timber, carloads, to various representative points published in tariffs named, applying from stations on the Illinois Central, Yazoo & Mississippi Valley, and New Orleans Great Northern Railroads, and specifically, when not otherwise stated, from Fernwood, Brookhaven, and Tylertown, Miss.

Except where otherwise stated, rates as below from points above described apply also from local stations on the Mississippi Central Railroad; and rates from Knoxo, Miss., and other stations on the Fernwood & Gulf Railroad are 2 cents higher. Rates in cents per 100 pounds.

F. L. Speiden's Freight Tariff No. 22, I. C. C. No. 193 (Mississippi Valley-Ohio River Lumber Tariff).

To St. Louis, Mo.; Henderson, Ky.; Owensboro, Ky.; Louisville, Ky., 24.

To Cairo, Mounds, Mound City, Brookport, and Metropolis, Ill., 19; from Knoxo, 21.5.

To East Cairo and Paducah, Ky., 17.5; from Knoxo, 20.

To Evansville, Jeffersonville, and New Albany, Ind., 25.

To Cincinnati, O., 26.5.

To Groups Nos. 1 to 41, various rates.

M. P. Washburn's (F. L. Speiden's) Mississippi Valley-Middle States Lumber Tariff No. 2, I. C. C. No. 159, as amended.

To Vincennes, Ind., 28.5.

To Chicago, Peoria, Danville, and Springfield, Ill., 30.5.

To Indianapolis, Ind.; Rockford, Ill.; Moline, Ill., 31.5.

To Dayton, O., 32.

42 To Kokomo, Ind.; Richmond, Ind.; Milwaukee, Wis.; Madison, Wis., 32.5.

To South Bend, Ind., 33.5.

To Fort Wayne, Ind., 34.5.

To Toledo, O.; Columbus, O.; Lima, O.; Kalamazoo, Mich.; Grand Rapids, Mich.; Detroit, Mich., 35.5.

To Charleston and Huntington, W. Va., 36.5.

To Akron, O.; Cleveland, O.; Saginaw, Mich., 37.

To Buffalo, N. Y.; Pittsburgh, Pa.; Parkersburg, W. Va.; Youngstown, O., 38.

To Cadillac, Mich., 39.

To Grafton, W. Va., 40.

Illinois Central Tariff 664–D, I. C. C. No. 5577, in connection with Star Union Line Basis for Freight Rates Eastbound, F. E. Shallenberger's No. 2, I. C. C. No. 4.

To Richmond, Va., and points taking same rates, 29.

To Washington, D. C., 32.5.

To Baltimore, Md., and points taking same rates, 36.

To Philadelphia, Pa., and points taking same rates, 37.

To Rochester, N. Y., and points taking same rates, 38.5.

To New York, Albany, Syracuse, Utica, and Troy, N. Y., and points taking same rates, 39.

To Boston, Mass., and points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut taking same rates, 43.

Illinois Central Tariff 506–A, I. C. C. 3996, as amended.

To Ashland, Wis., 36.

To Eau Claire, Wis., and Minneapolis, Minn., 36.

To Duluth, Minn., 39.

To Escanaba, Mich., 38.5.

To Ishpeming, Mich., 39.5.

To Albert Lea, Minn.; Iowa Falls, Ia., 37.

To Winona, Minn., 34.5; from Knoxo, no through rates.

To Sioux City, Ia., 35.

To Des Moines and Council Bluffs, Ia., 31.5; from Knoxo, no through rates.

To Dubuque, Ia., 30.5; from Knoxo, no through rates.

43 To Davenport, Ia.; Burlington, Ia., 29; from Knoxo, no through rates.

To Kansas City, St. Joseph, and Jefferson City, Mo., 29; from Knoxo, no through rates.

To Hannibal, Mo., 27; from Knoxo, no through rates.

Illinois Central Tariff 662–B, I. C. C. 5259, as amended.

Rates in this tariff apply from stations on the Illinois Central, specifically from Fernwood and Brookhaven, Miss., and, except as stated, from stations on the Mississippi Central Railroad. Rates do not apply from Knoxo, Miss., or other stations on the Fernwood & Gulf Railroad.

To stations on the Louisville, Henderson & St. Louis Railroad, from 28 to 32 cents.

To various points on the Kentucky division and branches of the Louisville & Nashville Railroad in Kentucky and Tennessee, from 24 to 33 cents.

To Chesapeake & Ohio stations in Kentucky—Mitchell, 27; Moscow, 20; Mount Sterling, 35.

To stations on Tennessee Central Railroad, 25.

To Coalburg, Ala., 25; Florence, Ala., 20; Huntsville, Ala., 20.

To Allen, N. C., and points on Norfolk & Southern Railroad taking same rates, 32. Do not apply from stations on the Mississippi Central.

To High Point, N. C., and points on Southern Railway taking same rates, 31. Do not apply from stations on the Mississippi Central.

Illinois Central Tariff 510–C, I. C. C. 4891, as amended.

To Memphis, from Fernwood (index No. 53, page 54), 14 cents; from Brookhaven (index No. 77, page 56), 14 cents.

Item 174, to Memphis, from Fernwood and Gulf points, including Knoxo, 16.5.

Note. From Mississippi Central points, 1 cent higher than Brookhaven, equals 15 cents to Memphis.

44 *Exhibit B–1 to bill of complaint.*

Filed Aug. 29, 1919.

Before the Interstate Commerce Commission.

SWIFT LUMBER COMPANY, COMPLAINANT, vs. FERNWOOD & GULF RAILROAD COMPANY, Walker D. Hines, Director General, et al., defendants.	DOCKET NO. 10827.

ANSWER OF THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY.

Comes now the defendant, The Minneapolis & St. Louis Railroad Company, and answering the complaint of the complainant herein and its claim for reparation, denies each and every matter and thing stated and contained in said complaint.

Wherefore this defendant prays that the complaint of the complainant may be dismissed and for such other relief as to the commission may seem proper in the premises.

THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY.

(Signed) By W. C. KNOBLE, *Corporate Auditor.*

45 *Exhibit B–2 to bill of complaint.*

Filed Aug. 29, 1919.

Before the Interstate Commerce Commission.

SWIFT LUMBER COMPANY, COMPLAINANT, vs. FERNWOOD & GULF RAILROAD COMPANY, Walker D. Hines, Director General, et al., defendants.	I. C. C. Docket No. 10827.

The Bloomsburg & Sullivan Railroad Company, one of the defendants named in the above proceedings, for its answer of the petition therein filed, respectively states:

1. This defendant admits that it is a common carrier and to a very limited extent engaged with its connections in the transportation of property between certain States, either by continuous carriage wholly by rail or partly by rail and partly by steamship, and that as such common carrier and in respect of such interstate transportation it is

subject to the provisions of the act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof or supplementary thereto, in so far as such provisions are constitutional and legal.

2. This company admits that it is a party to the tariffs of which the above petition refers to by concurrences given connecting lines, they holding our power of attorney for that purpose, and this defendant has not sufficient information to admit or deny the averments contained in the above docket.

3. Whereof this defendant prays that the petition as to it be dismissed.

BLOOMSBURG & SULLIVAN RAILROAD COMPANY.
(Signed) By its W. C. SNYDER, *Superintendent.*

BLOOMSBURG, PA., *August 27, 1919.*

46 COUNSEL.

STATE OF PENNSYLVANIA,
County of Columbia, ss:

W. S. Snyder, having been duly sworn, says that he is the superintendent of the Bloomsburg & Sullivan Railroad Company, the defendant above named and answering, and that the facts set forth in the foregoing answer are true, as he verily believes.

Sworn to and subscribed before me this twenty-seventh day of August, 1919.

[SEAL.] (Signed) FRANK P. ZARR,
Notary Public.

My commission expires March 9, 1923.

47 *Exhibit B–3 to bill of complaint.*

Before the Interstate Commerce Commission.

Filed Sep. 15, 1919.

SWIFT LUMBER COMPANY, COMPLAINANT,
vs.
WALKER D. HINES, DIRECTOR GENERAL OF RAILROADS, ET AL., DEFENDANT.
} I. C. C. Docket No. 10827.

The answer of Walker D. Hines, Director General of Railroads, answering for himself and on behalf of all the defendants under Federal control to the complaint.

For answer to the complaint, or so much thereof as he is advised it is necessary for him to answer, this defendant says:

1. He admits that he is Director General of Railroads, and as such is exercising the powers vested in and duties assigned him.

2. He refers to the tariffs named in the complaint and to all other tariffs applicable for a correct statement of the rates referred to or complained of herein.

3. He says that there was made the director general's order No. 28, effective June 25, 1918, and he avers it is therein by him found and

certified to this honorable commission that in order to defray the expenses of Federal control and operation fairly chargeable to railway operating expenses and also to pay railway tax accruals other than war taxes, net rents for joint facilities and equipment, and compensation to the carriers operating as a unit, it was necessary to increase the railway operating revenue; also that in his opinion the public interest required a general advance in freight rates, passenger fares, and baggage charges as therein provided; and he further avers that all rates as now in force and complained of herein have been established pursuant to and in accordance with said order.

4. He denies that he or any of the defendants under Federal control has violated or is violating sections 1, 2, or 3 of the act to regulate commerce, as alleged in the complaint, or that anything done or omitted by him or any of them, with respect to the subject matter of the said complaint, is in violation of law, or that he or any of them should be subjected to any adverse order; and he denied that the complainant is entitled to the relief prayed, or any other relief.

And having fully answered, he prays that the complaint may be dismissed.

WALKER D. HINES,
Director General of Railroads.
(Signed) By R. V. FLETCHER,
Assistant General Counsel,
United States Railroad Administration.

WASHINGTON, D. C., *September 13, 1919.*

48 *Exhibit B–4 to bill of complaint.*

Filed Oct. 29, 1919.

Before the Interstate Commerce Commission.

SWIFT LUMBER COMPANY, COMPLAINANT,
vs.
FERNWOOD & GULF RAILROAD COMPANY ET AL. } No. 10827.

ANSWER OF FERNWOOD & GULF RAILROAD COMPANY.

GREEN & GREEN, *Attorneys.*

49 Before the Interstate Commerce Commission.

SWIFT LUMBER COMPANY, COMPLAINANT,
vs.
FERNWOOD & GULF RAILROAD COMPANY ET AL.,
Walker D. Hines, Director General.

ANSWER OF FERNWOOD & GULF RAILROAD COMPANY.

Now comes Fernwood & Gulf Railroad Company, a corporation duly chartered, organized, and existing under and by virtue of the

laws of the State of Mississippi, having its residence and legal domicile in the State of Mississippi, and for answer unto said petition, says:

I.

This respondent admits the allegations of Paragraph I.

The respondent admits the allegations of Paragraph II of the petition.

50

III.

This respondent admits the allegations of Paragraph III.

IV.

This respondent denies that either individually or in conjunction with others it either publishes, maintains, charges, and/or collects either unreasonable, unjust, excessive and/or unduly discriminatory rates for the transportation of yellow pine lumber, timber, and other sawmill products (from the station of Knoxo, Miss.) to interstate points more particularly alleged in said petition, or to any other point.

Respondent denies that individually or in connection with any of the other defendants to said petition it has in any way published, maintained, charged, or collected any rate that is in contravention of the act to regulate commerce with its several amendments.

Respondent denies that in the general adjustment of rates on yellow pine lumber from the territory adjacent to the station of Knoxo, Mississippi, to the points in the said States named, or to any other point, that the same rates apply from all points with the exception of Knoxo and a few other points within a territory or group extending from the Gulf of Mexico on the south to Jackson, Miss., and the line of the Alabama and Vicksburg Railroad and beyond on the north, a distance of about two hundred miles, and from the Mississippi River on the west to the main line of the Mobile and Ohio on the east, a distance of approximately two hundred miles. Respondent denies

51 that any respondent to this petition, either jointly or severally, has ever published, maintained, and/or collected a blanket rate from points similarly situated to said Knoxo in this, that said Knoxo is located upon the line of the Fernwood and Gulf Railroad, six miles east of Tylertown, Miss., and twenty-seven miles from Fernwood, Mississippi, the junction point with the Illinois Central Railroad. Respondent admits that the rates from said Knoxo are uniformly two cents per hundred pounds higher than from the stations of Tylertown and Fernwood. The reason therefor is that from said Tylertown the New Orleans Great Northern Railroad extends southwardly to a junction with its main line at Rio, and in order for this respondent to move any tonnage therefrom it must meet competition, irrespective of whether or not by so doing it earns a reasonable return upon its property charged with railroad duties; that from said Fernwood, Miss., the movement is over the

main line of the Illinois Central Railroad and not on an independent short line carrier. Respondent denies that the said Illinois Central Railroad has ever pursued a policy of allowing stations upon the branch lines independently owned and operated to enjoy the same rates as points upon its main line. Respondent denies that said group rates apply from such points of origin as make the rate from Knoxo unreasonable, unjust, excessive, and/or unlawful either to the extent that they exceed such alleged reasonable rates of to any other extent.

Respondent denies that the adjustment of rates whereby the rate from Knoxo is two cents higher than from any other point mentioned is unjust, or discriminatory against the station of Knoxo, or against the complainant, and denies that it unduly favors competing sawmills and points located on the rails of the above-named con-
52 nections of the said Fernwood and Gulf Railroad, or on the rails of other carriers similarly situated.

Respondent denies that it is a tap line and avers that by order dated December 21, 1914, upon investigation duly had it was dismissed from the tap line case, I. & S. Docket No. 11, as appears by Exhibit A hereto annexed and made a part hereof. Respondent avers that its stock is owned by F. B. Enochs and that its bonds have been distributed in the markets of the world. Respondent admits that its line runs in a general east and west direction to a junction with the Illinois Central at Fernwood and the New Orleans Great Northern at Tylertown, which are north and south trunk lines. Respondent is without information or belief as to whether there are within said territory other short-line railroads owned under a community of interest with the manufacturing companies which are accorded from their local stations the same rate to the markets in the States above named as apply from the junction with their trunk-line connections, and upon such want of information and belief denies this allegation.

Respondent denies that the Mississippi Central Railroad is in any sense a tap line, but avers that said line has been taken over by the United States R. R. Administration and is now operated by the director general, and extends from Natchez, Miss., where it connects with the Mississippi River and with the Missouri Pacific and Yazoo and Mississippi Valley, which roads extend to the territory made the basis of such complaint, and from said Natchez tonnage so originating along the line of said Mississippi Central Railroad could move either by rail or water under rates wherein the Mississippi Central Railroad could demand and receive such divisions as would make their operation profitable.

53 That said Mississippi Central Railroad crosses the main line of the Yazoo and Mississippi Valley Railroad at Roxie, Miss. Said Mississippi Central then crosses the main line of the Illinois Central Railroad at Brookhaven, Miss., at which point it also joins a line of the Illinois Central extending east to Monticello, at which point it connects with the New Orleans Great Northern R. R.

Respondent avers further that at Montrose said Mississippi Central Railroad crosses the New Orleans Great Northern and also crosses the Pearl River, which at that point is a navigable stream and wherefore governmental appropriations are made; that said Mississippi Central then crosses the Gulf and Ship Island Railroad at Silver Creek and then extends into Hattiesburg, Miss., where it joins the New Orleans and North Eastern division of the Southern Railroad, the main line of the Gulf and Ship Island Railroad, and the Gulf, Mobile and Northern, and that the said Mississippi Central Railroad has six independent systems of trunk lines with which it is connected and over which it can move its tonnage and from which it can exact therefor divisions, and in addition has water connections both at Natchez and Wanilla that are essential if not actually utilized, and therefore respondent denies that transportation and traffic conditions surrounding the shipment from points on said Mississippi Central Railroad are substantially the same as from points upon the said Fernwood and Gulf Railroad, and denies upon information and belief that said Mississippi Central Railroad is owned and controlled by persons primarily engaged in the manufacture of yellow pine lumber. Respondent admits that the Mississippi Central is an east and west line and dependent upon its north and south connections to reach the lumber market and denies that it is located in proximity to the Fernwood and Gulf Railroad.

54 Respondent admits that complainant is an independent sawmill operator and that he has no connection with the Fernwood and Gulf Railroad, and denies that any lumber interest controls the Fernwood and Gulf Railroad.

Respondent denies that the group or trunk line basis of rates to many of the destinations above described apply from points on other short lines within the territory described in so far as any of the connections of the New Orleans Great Northern or the Illinois Central Railroads are concerned, and denies that either of said trunk lines have ever pursued a policy of affording a rate from stations upon independently operated short-line railroads the same as afforded the main-line stations.

Respondent denies that the Alabama and Mississippi Railroad connects with either the New Orleans Great Northern or the Illinois Central, but, on the contrary, runs from Evanston on the Gulf, Mobile and Northern to Vinegar Bend, Ala. Respondent shows the Mississippi and Western Railroad connects with the Gulf, Mobile and Northern at Stevens, and runs in an easterly direction towards the Southern Railroad. The Cybur, Gulf and Northwestern Railroad, which has been consolidated in some way to respondent unknown with the said Pearl River Valley Railroad, runs from Picayune, Miss., northward to Cybur, approximately fifteen miles, having its junction with the Southern Railroad, but the trunk-line connections of each and all of the aforesaid short lines are different from the trunk-line connections with which this respondent connects, and there is no movement whatsoever over or crossing the line of this

respondent of any freight arising on said Alabama and Mississippi Railroad, said Mississippi and Western, said Cybur, Gulf
55 and Northern Railroad, or said Pearl River Valley Railroad.

That said Alabama and Mississippi Railroad starts at Pascagoula, on the Gulf of Mexico, where it connects with the Louisville & Nashville Railroad, and runs thence northwards to Evanston, where it connects with the Gulf, Mobile and Northern, and thence northward to a connection with the Mobile and Ohio Railroad at Vinegar Bend, Ala., and that the policy of said Mobile and Ohio and the policy of the said other trunk lines has been and is different from that obtaining in the territory wherein said petitioner's mill is located; and respondent denies that there ever was in said territory wherein said plaintiff's mill is located a policy to give a blanket rate through to the points mentioned in said petition, and respondent denies that the assessment of rate from Knoxo, Miss., of two cents higher than from the main-line points unduly discriminates against the complainant or unduly favors its competitors located upon the rails of trunk lines and on short lines in said adjacent territory.

VI.

Respondent denies that by reason of any facts set forth in the petition or any other facts said complainant is subjected to a payment of rates which are now or ever have been unreasonable, unjust and/or excessive or in violation of section one of the said act to regulate commerce, or unduly discriminates against complainant in violation of section two, or unduly preferential to other shippers or localities in violation of section three of said act to regulate commerce.

Respondent avers that its said line is a public carrier for hire and its capitalization has been approved by this honorable com-
56 mission through its valuation department, and also this respondent does not receive now in the operation of its road adequate revenue for the purpose of properly serving the public.

Respondent avers that its road was constructed for the moving to market timber owned by said complainant and others and after being utilized for that purpose will become without value and have to be junked, and that in addition to a reasonable return upon its investment respondent is entitled to set aside a reserve which when lumber operations are completed will vouchsafe to those who have invested in its securities a return of capital commensurate with the original investment; and that this respondent is entitled to assess against each of the parties utilizing the public facilities for transporting lumber to markets tributary to its line an adequate depreciation charge so as to vouchsafe said capital return, but that instead of so having said capital return vouchsafed if said rates are reduced the result will be to cause at once an impairment of this respondent's financial condition to such extent that receivership will be inevitable and dismemberment only a question of a short time,

as has been actually the case with the eastern end of the Liberty-White Railroad, which lies between said Mississippi Central and said Fernwood and Gulf Railroads. Respondent avers that if said road was constructed for the purpose of serving the public by bringing to market timber adjacent to its line and that without its said line being so constructed said timber was not available and said timber thus made available is assessable with a reasonable return upon the capital investment to vouchsafe a capital return at the end of the operating period.

57 VII.

Respondent denies that it has ever collected from said complainant any rates which are unreasonable, unjust, excessive, discriminatory, and/or preferential. Respondent denies that complainant's part is similar and identical in character with that of other yellow pine mills in the territory above described and admits that it competes with other mills in the market territories above described, but shows to the commission that the rates here complained of have been in effect for many years and that complainant was advised of its existence at the date of the establishment of his mill and acquiesced in said rate as being a proper rate, and respondent avers that the additional charge necessary to haul said lumber to the main trunk lines found expression in the price which the said complainant paid for his lands, timber, and rights of way in this, that it was less than timber of the same kind and character was selling for on the main trunk lines, where such timber could move upon said trunk line rates. Respondent further denies that said complainant is the only one charged a rate in excess of the alleged blanket rate, alleged to exist but which does not exist in fact, and denies that it is obliged to sell its product in such markets in competition with practically the entire output of yellow pine points in the originating group described, and respondent avers that the prices are controlled largely by stumpage values and that the stumpage value existing at points as remote as Knoxo are lower than the said values at main line points, and avers that main line points producing lumber have to take into consideration the difference in the cost of raw material, which respondent avers more than offsets any alleged discrimination arising by reason of said rates. Re-
58 spondent denies that complainant has suffered and is suffering any loss by reason and to the extent of any alleged greater rate which it is compelled to pay on its shipments over those places by its competitors. Respondent denies that there is a discrimination which is continuing and denies that said complainant is unable to make a statement thereof.

Unto the supplemental petition this respondent neither admits nor denies the correctness of the statement appended, but if an order for reparation is made will comply with the rule in that behalf existing. Respondent denies that said alleged rates are unreasonable and discriminatory. Respondent denies that said complainant was in-

jured by the collection of said rates. Respondent denies that said lumber so shipped was sold by complainant delivered at destination and denies that the charges assessed thereon were paid for on account and borne by it. He denies that it has been damaged as therein alleged or in any other sum.

2. Respondent denies that said rates were not reasonable and denies that said complainant has been damaged by any discrimination in the manner set forth in said petition or to any extent whatever, and denies specifically each of the allegations as they are set forth in full as hereinbefore alleged.

3. Respondent is without information as to whether or not said lumber so shipped under said Exhibit B was sold f. o. b. said mill at Knoxo, but if the order of reparation is made this respondent will submit proper lists for checking in accordance with the rules, but denies, however, that said complainant is in any way entitled to any damages or compensation by reason thereof. Respondent de-
59 nies that it sells its product in actual competition with other mills, and avers that during the time mentioned that it could have gotten any price it desired almost for the output of its said mill; that the question was not one of price but of obtaining lumber; and denies that there was any discrimination of any kind or character which damaged the said complainant in any way or to any extent. Respondent denies that the said complainant can collect damages in any way for lumber sold f. o. b. its mill. Respondent denies that during any of said period save the time after filing of this formal complaint that said petitioner made any complaint of the said movement, and said rate was acquiesced therein, and that the amount received therefor has been in good faith by this respondent expended and disbursed for the public welfare, and denies that any order of reparation therefor can be awarded.

And now, having fully answered, respondent prays that it be discharged with its reasonable costs and expenses.

FERNWOOD & GULF RAILROAD COMPANY.
GREEN & GREEN, *Attorneys.*

STATE OF MISSISSIPPI,
County of Hinds, city of Jackson:

Personally appeared before me, the undersigned notary public, the within-named Garner W. Green, who, having been by me first duly sworn, on oath states that he is one of the attorneys for the Fernwood & Gulf Railroad Company, and that upon the 27th day of October, 1919, he sent under registered cover the copy of the answer of the Fernwood & Gulf Railroad Company to the Hon. L. Palmer, attorney for plaintiff, 606 Commercial Place, New Orleans, La.

(Signed) GARNER W. GREEN.

Sworn to and subscribed before me this the 27th day of October, 1919.

[SEAL.] (Signed) O. J. WAITE,
Notary Public.

60 *Exhibit C to bill of complaint.*

Before the Interstate Commerce Commission.

SWIFT LUMBER COMPANY, COMPLAINANT,
vs.
FERNWOOD & GULF RAILROAD COMPANY, DIRECTOR General, et al., defendants. } Docket No. 10827.

CHICAGO, ILL., *Dec. 18, 19, 1919.*

61 Before the Interstate Commerce Commission.

SWIFT LUMBER COMPANY, COMPLAINANT,
vs.
FERNWOOD & GULF RAILROAD COMPANY, DIRECTOR General, et al., defendants. } Docket No. 10827.

CHICAGO, ILLINOIS, *December 8, 1919—10.00 a. m.*

Before J. Edgar Smith, special examiner.

Met pursuant to notice.

Appearances:

L. Palmer, 606 Commercial Place, New Orleans, Louisiana, appearing for complainant.

A. P. Humburg and J. L. Sheppard, 135 East 11th Place, Chicago, Illinois, appearing for defendants under Federal control.

Green & Green, Jackson, Mississippi, appearing for Fernwood & Gulf Railroad Company.

George B. Auburtin, 727 Gravier Street, New Orleans, La., appearing for New Orleans Great Northern Railroad Company.

64 PROCEEDINGS.

Exam. SMITH. Gentlemen, the Interstate Commerce Commission has set for hearing at this time and place the complaint of Swift Lumber Company vs. Fernwood & Gulf Railroad Company, Director General, et al. This case is known on the docket as 10827, and was filed July 2, 1919.

I see present Mr. Palmer, representing the complainant; Mr. Humburg, representing the director general; Mr. Green, representing the Fernwood & Gulf; Mr. Arburtin, representing the New Orleans Great Northern Railroad Company.

Are there any other appearances?

(No response.)

Exam. SMITH. In this case it is alleged that rates on yellow-pine lumber, timber, and other sawmill products, in carloads, from Knoxo, Mississippi, a local situation on the Fernwood & Gulf Railroad, to numerous interstate destinations are unreasonable, unjustly discriminatory, and unduly prejudicial in that they exceed the rates

contemporaneously applied from the junction points between the Fernwood & Gulf and its trunk-line connections and from other points both on trunk lines and short lines in the so-called yellow-pine blanket. Reparation and the establishment of reasonable rates for the future are asked.

65 Mr. Palmer, is that statement substantially correct?

Mr. PALMER. I think so; yes.

Exam. SMITH. Are there any objections, gentlemen?

Mr. HUMBURG. I think that is a fair summary, Mr. Examiner.

Exam. SMITH. You may proceed, Mr. Palmer.

Mr. PALMER. I will have Mr. Kimball sworn. You might swear me and Mr. Kimball also, as I will have some statements to make as I go along.

(The oath was administered to Mr. Palmer and Mr. Kimball.)

Mr. PALMER. Before I examine Mr. Kimball, I want to put in a few exhibits and there are some others that I will put in in connection with my examination of him. In the way of exhibits I will first refer to Exhibit A of our complaint and ask to have that considered in evidence. It is printed in the complaint.

Exam. SMITH. Exhibit A as printed and bound with the complaint is the exhibit you refer to?

Mr. PALMER. Yes. Now, elaborating on that, I offer as an exhibit a more detailed statement of the tariff references covering the rates involved in the complaint, showing the entries in the various tariffs which determine the relationship of rates from points on rails

66 of originating carriers.

(The document was thereupon received in evidence, marked "Complainant's Exhibit 1, Witness Palmer," and is forwarded herewith.)

Exam. SMITH. Mr. Palmer, before you proceed further, you drew and signed, as attorney, the complaint that is before the commission now?

Mr. PALMER. Yes, sir.

Exam. SMITH. The statements therein made are true to the best of your knowledge and belief?

Mr. PALMER. Yes, sir.

J. B. KIMBALL was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Q. (By Mr. PALMER.) Mr. Kimball, state your connection with the Swift Lumber Company, complainant in this case.

A. My name is J. B. Kimball, and I am secretary-treasurer of the Swift Lumber Company, a corporation organized under the laws of the State of Mississippi, on September 26, 1911. I am a stockholder and a director and have been since the organization of the company.

Q. What are your duties in that connection? What part of the business do you handle?

A. I have charge of the finances, the sales of lumber, and the accounting and the shipping.

67 Q. How long has the Swift Lumber Company been operating at Knoxo?

A. Since April, 1912.

Q. Knoxo is located on what line?

A. On the Fernwood & Gulf Railroad.

Q. How do your shipments move out from there, over what connections?

A. Over the Fernwood & Gulf, and the I. C., with occasional shipments moving by way of the Fernwood & Gulf-New Orleans Great Northern.

Q. How far is Knoxo from the junction of the I. C.?

A. Twenty-seven miles.

Q. That junction is at what point?

A. At Fernwood, Mississippi.

Q. How about the connection with the New Orleans Great Northern?

A. We are seven miles from Tylertown, which is the junction point of the Fernwood & Gulf Railroad with the New Orleans Great Northern Railroad.

Q. What is the nature of the Swift Lumber Company's business?

A. We are sawing and manufacturing long leaf yellow pine timber and lumber.

Q. You have a planing mill?

A. We have a dry kiln and a planing mill.

68 Q. You manufacture a general line of yellow pine products?

A. Yes, sir; we manufacture a general line of yellow pine products, both rough and dressed.

Q. Is that a timber country down there?

A. That is a timbered country throughout that section of the State, and there are several sawmills besides ours in that part of the State.

Q. What is the character of their product as compared with yours?

A. It is practically the same class and kind of a product as ours, with the exception that there are one or two sawmills which are cutting hardwood instead of pine.

Q. What is the capacity of your mill?

A. About one million feet a month, or about 45,000 feet per day.

Q. Your shipments will run about how much in a month, how many cars?

A. Approximately one million feet, in that neighborhood.

Q. But I mean in cars. In that connection just look at this statement. I do not care to offer the statement in evidence, but it is just for the purpose of refreshing the witness' recollection. Is that a statement you made up of your shipments for the first half of this year?

A. It is.

Q. Is that a correct statement from your books?

69 A. This is a correct copy of our shipping book for the period mentioned.

Mr. PALMER. I will make the statement myself that from that I made up the little statement of the distribution of the shipments for that six months, showing the markets to which the shipments were made.

Mr. HUMBURG. May I ask, Mr. Palmer, if the statement which the witness now has in his hand, and to which you made reference, is the exhibit to your supplemental complaint, or is it a set of other shipments?

Mr. PALMER. No; it includes other shipments as well. I will offer this summary statement in evidence, I believe. It shows 27 cars to points in Tennessee and Kentucky; 69 cars to points on and north of the Ohio River; 31 cars to points in Mississippi; 35 cars to New Orleans for export.

(The document was thereupon marked "Complainant's Exhibit No. 2, Witness Kimball," and is forwarded herewith.)

Mr. PALMER. Right in that connection, I have filed a supplemental complaint and prayer for reparation, which was returned to me for the reason that I did not send enough copies to go around to all the defendants. At this time, in connection with this question of the distribution of the shipments and the markets in which the
70 complainant does business, I will ask to have that supplemental complaint filed as an exhibit, just for that purpose. So far we are getting a detailed list of the shipments on which we expect to claim reparation. It is not only for that purpose, that is, for the purpose of elaborating further on the general character of the business, but also is to be considered as proof of damage for the present.

Exam. SMITH. Is there objection to that, gentlemen?

Mr. PALMER. It is understood I am not filing this as a complaint now, but as a convenient form of an exhibit.

Mr. HUMBURG. As I understand it, it is not to be filed as a complaint?

Mr. PALMER. No.

Mr. HUMBURG. But as an exhibit to show the shipments made?

Mr. PALMER. Yes; I have it in that shape and it won't be any good hereafter for that particular purpose.

Exam. SMITH. That exhibit will be received.

(The document was thereupon received in evidence, marked "Complainant's Exhibit No. 3, Witness Kimball," and is forwarded herewith.)

Q. (By Mr. PALMER.) Mr. Kimball, you are continuing to make shipments now, are you?

A. We are.

71 Q. Since the period covered by this exhibit?

A. Yes, sir.

Q. Does this statement which I have filed here, this summary of your shipments, Exhibit 2, portray practically the general run of your business, as to your markets in which you sell?

A. It does under normal conditions.

Q. To all these markets, as alleged in the complaint, you have either no through rates to a few points or an arbitrary of 2 cents over the rate applying from the junction point?

A. Yes, sir.

Q. Explain to the examiner how that affects you in your business.

A. We sell our lumber to wholesalers and they give us their inquiries and we make quotations on their inquiries. We make them either a delivered price at a stated destination or we give them a price f. o. b. cars at our mill or a price f. o. b. cars main-line rate. In figuring our net prices on our output we necessarily must deduct the extra freight on the shipment caused by the existing two-cent arbitrary.

If we gave our wholesalers a price f. o. b. on the main-line rate, we make a reduction from our invoice of two cents per hun-
72 dred pounds, which protects them against the two-cent arbitrary rate. If we make a customer a price f. o. b. cars or f. o. b. mill, he has to take into consideration the existing arbitrary in making his delivered price to his customer he sells to.

In the past I have had considerable trouble and correspondence through misunderstanding about the two-cent arbitrary. I have made prices to wholesalers f. o. b. cars or mill, and when they made their final returns they deducted the two-cent arbitrary; and after having this matter called to their attention they refused to refund the extra freight charges and disrupted our business relations with them.

Q. So you have a two-cent arbitrary constantly brought home to you, in other words?

A. It always has to be taken into consideration. In writing letters to wholesalers or prospective customers who are not familiar with the conditions on our line, I make it a practice to call attention to the fact that we have a two-cent arbitrary over the main-line rate.

Q. How is the competition in that territory with other mills? In other words, what proportion of the other mills have the main-line rate as compared with you, and how many are there that are situated the same as you are, with an arbitrary, that you know of?

A. I don't know of my personal knowledge any other mill
73 except the one that is located on the Fernwood & Gulf Railroad at another station.

Q. What kind of a mill is it?

A. It is a small sawmill cutting hardwoods and short-leaf timber.

Q. In that connection I will offer a map of the territory from New Orleans up to Goodman, Mississippi, on the Illinois Central; Vicksburg, on the Yazoo & Mississippi Valley; Tollison, on the Gulf, Mobile & Northern; and Meridian, on the Mobile & Ohio and New Orleans & Northeastern; and extending from the Mississippi River to the main line of the Mobile & Ohio. I do not want anybody to think I consider this map a work of art at all, but it is accurate.

(The map was thereupon received in evidence, marked "Complainant's Exhibit No. 4, Witness Kimball," and is forwarded herewith.)

Mr. PALMER. That map I have marked with a cross on the location of all the sawmills I am able to locate, which according to the tariff and the Red Book, which is a standard lumber directory, are on the lines which take arbitraries over the main-line rates, and you will notice in about the center of the map a large cross marked "Knoxo," in capital letters, and close to it a small cross which repre-
74 sents the mill referred to by Mr. Kimball, and down at Madisonville, on the Kentwood & Eastern, just above Lake Pontchartrain, there is another cross, representing the Mississippi Valley saw and planing mill. Mr. Kimball says that small cross should be on the other side of Tylertown.

The WITNESS. It should be west of Tylertown.

Mr. PALMER. I will just let that correction be made in the record without disturbing the map.

Examiner SMITH. There is no necessity of disturbing the map. It is perfectly plain from the testimony where the competing mill referred to by Mr. Kimball is; it is west of Tylertown on the Fernwood & Gulf Railroad.

Mr. PALMER. Yes. Now, in my complaint I alleged there was only the complainant's mill and one other small mill, but upon looking it up further I discover there is another mill at Madisonville, which, by the way, has a 1-cent arbitrary as against our 2-cent arbitrary.

In that connection it is well to observe that the 2-cent arbitrary relates to the adjustment before General Order No. 28. Under that order the arbitraries are increased in some instances to 2½ cents. This map is based on the rate relationships set out in F. L. Speiden's Tariff I. C. C. No. 159, Mississippi Valley Maddle States
75 Lumber Tariff No. 2. As I stated, I located these mills by the Red Book.

I want now to ask Mr. Kimball in regard to these short lines.

Q. (By Mr. PALMER.) You know some of these short-line roads connecting with the Illinois Central?

The WITNESS. I do.

Q. Garyville Northern, do you know that road?

A. No; I do not.

Q. The New Orleans, Natalbany & Natchez, that is a lumber-owned road, is it not?

A. That is owned by the Natalbany interests, or controlled by them.

Q. How about the Loranger, Louisiana & Northeast?

A. That is controlled by the Genesse Lumber Company.

Q. The Kentwood & Eastern?

A. Controlled by the Brooks-Scanlon Company.

Q. Kentwood, Greensburg & Southwestern?

A. By the Amos-Kent Lumber and Brick Company.

Q. Liberty White?

A. It was controlled by the J. J. White Lumber Company.

Mr. HUMBURG. Is it out of existence now?

The WITNESS. They have moved their mill, and the railroad in question has been in the hands of a receiver for some time.

Q. (By Mr. PALMER.) The Fernwood & Gulf?

76 A. That is controlled by the Fernwood Lumber Company.

Q. Natchez, Columbus & Mobile?

A. By the Denkman Lumber Company.

Q. What is the character of the ownership of the Mississippi Central?

A. It is controlled by the J. J. Newman Lumber Company.

Q. They have mills on that line?

A. They have mills at Hattiesburg, Sumrall, and at Bude.

Q. That mill at Bude is not in the name of the Newman Lumber Company, is it?

A. No; that is in the name of the Central Lumber Company, I think.

Q. I haven't it here, but my impression is that the Homo-Chitto Lumber Company is the name of that company; that is a Newman company.

A. I understand that to be one of the Newman interests; yes, sir.

Q. How about the Central Lumber Company?

A. I understand that to be one of the J. J. Newman interests.

Q. Where are their mills; that is, the Central Lumber Company's mills?

A. They have a planing mill at Brookhaven, and their mills are located on the Mississippi Central Railroad.

Q. I am more familiar with that, I guess, than the wit-

77 ness. Their mills are at Lucien and McCalls. The mill at Brookhaven is a planing mill. I have not counted that in my list of sawmills.

Do you know about these other short lines, the Pearl River Valley and the Alabama & Mississippi?

A. The Alabama & Mississippi is owned by the Vinegar Bend Lumber Company. What is the other one?

Q. Pearl River Valley?

A. I am not familiar with that.

Q. Do you know of any sawmills located on the New Orleans, Natalbany & Natchez—that is, except at the junction point, Natalbany?

A. No; I do not.

Q. Do you know of any on the Kentwood, Greensburg & Southwestern?

A. No; I do not.

Q. And the Loranger, Louisiana and Northeast?

A. No; I do not.

Q. Nor on the Kentwood & Eastern, except the Madisonville mill?

A. No; I do not.

Q. That one at Madisonville is located on the Tchefuncta River, and I understand it makes water shipments largely for export across Lake Pontchartrain. The Liberty White——

A. There is no mill on the Liberty White now.

78 Q. None on the Natchez, Columbus & Mobile except at the junction points?

A. I don't know of any sawmill there. There are shipments of hewn timber off of that line.

Mr. PALMER. I might make the explanation here that I am asking that in support of my allegation that on all of these short lines connecting with the Illinois Central, which take arbitraries over the main line rate, there are actually no sawmills which pay that arbitrary. That these three mills marked on the map are the only ones in that whole district which pay an arbitrary over the group rates. Specifically there appear on this map the Pearl River Valley, the Alabama & Western, Mississippi & Western, and the Mississippi Eastern which take the main line or group rate. Incidentally the Mississippi & Western is owned by some lumber company; I have forgotten the name of it.

Q. What road is that?

A. The Mississippi & Western.

Mr. HUMBURG. Neither of those last are connected with the Illinois Central, are they?

Mr. PALMER. No; but the Mississippi & Western is owned by the Long-Bell Company. They are both lumber roads.

Mr. HUMBURG. Neither the Mississippi Eastern nor the Missis-

79 sippi & Western connects with the Illinois Central or the New Orleans Great Northern?

Mr. PALMER. Neither one; no, sir.

In connection with the map I offer a list of sawmill points on all the roads shown in the map, according to the Red Book of February, 1919. In some cases there are more than one mill, in which case the number is shown in parentheses. There are some junction points where there are mills, but I have included those points only on one road, and in the case of the other road I have given reference to them in parentheses.

Mr. HUMBURG. You mean by that, Mr. Palmer, that this exhibit about to be offered is to accompany your map?

Mr. PALMER. Yes.

Mr. HUMBURG. And shows the location of the sawmills in the entire originating territory?

Mr. PALMER. Yes.

Mr. HUMBURG. On main lines and branch lines and short lines as well?

Mr. PALMER. Yes, sir.

Mr. HUMBURG. Or is it only short lines?

Mr. PALMER. No; on all of them.

(The document was thereupon received in evidence, marked "Complainant's Exhibit No. 5, Witness Kimball," and is forwarded herewith.)

80 Mr. PALMER. For instance, at Hattiesburg there are five mills which are shown only on the Northeastern. In the case of the Mississippi Central I have an entry, "Hattiesburg, N. O. & N. E.," in parentheses. That makes the summary of the total mills on each line not exactly accurate, because I have counted in each case only the actual number of mills that are listed on that line. The summary is 377 mills on roads which take the group rates, and three mills at local points on roads taking arbitraries.

As to these other yellow-pine mills located in this territory, do you know in what markets they do business?

The WITNESS. I don't know the market of each individual mill.

Q. (By Mr. PALMER.) Generally.

A. In a general way they sell lumber in the same territory that we do, through the Middle States and up into New York, Tennessee, and Kentucky.

Q. In other words, you come in competition with them in all your markets?

A. We do.

Q. (By Mr. HUMBURG.) Who are "them"?

Mr. PALMER. The mills in that territory generally.

The WITNESS. The other sawmills.

Mr. HUMBURG. You mean all the sawmills on your Exhibit

81 No. 5?

The WITNESS. Yes.

Q. (By Mr. PALMER.) You know in a general way that they do actually make shipments to all of those places, the same as you do?

A. Yes, sir. So far as I know there is no marked difference between our method of handling our output and the methods employed or used by the other sawmills in that territory.

Mr. HUMBURG. And in other territories?

The WITNESS. I beg pardon.

Mr. HUMBURG. And in other territories?

The WITNESS. In the Southern States.

Q. (By Mr. PALMER.) In view of the fact, Mr. Kimball, that in all this territory surrounding you practically all the mills have the advantage of you of two cents or two and a half cents, as the case may be in the rate, can you estimate how it affects you in the sale of your product and the prices you receive, in view of this competition from that large territory?

A. There are no published price lists similar to that on cotton and corn and other commodities, but inquiries are circulated among all the sawmills and the brokers take the offers which are the lowest on inquiries. At other times they send representatives, lum-

82 ber buyers through the country from mill to mill, and ask for quotations on requirements. In selling lumber to these lumber buyers I ask them a certain price for a certain grade and size of

lumber, and they ask whether my price is f. o. b. the main-line rate, or f. o. b. our mill. If it is f. o. b. our mill, they make a deduction in the price offered or quoted, which amounts to two cents per hundred pounds on the estimated weight of the lumber. Different grades and sizes of lumber have a recognized weight, a list of which is published by the Southern Pine Association and other institutions, and they are well known and recognized among lumber men. In making me an offer they will frequently say, "I will bid you a certain price delivered on the main line, or 50 cents, or 75 cents per thousand less delivered on cars at your mill, the variation in the deduction being based on the weight of the lumber which they propose to purchase.

Q. If you were making a sale based on main-line delivery, you would, I presume, aim to get as near as you could what you thought the market justified, and what other mills were getting?

A. Naturally I try to get as much for our product as possible, and I watch such information as I am able to get hold of, to inform myself as to the prices and values of our product.

83 Q. When was it you said you began operations there?

A. In April, 1912.

Q. That was at a time when the old tap line situation obtained, I believe.

A. Yes.

Q. That brings me to a couple more exhibits, which have a special bearing on the Mississippi Central situation. Our contention is that there is no more reason why points on the Fernwood & Gulf should take an arbitrary over the main-line rate than points on the Mississippi Central should, which is also a lumber-controlled road; it is an east-and-west road, has no outlet itself to northern connections; it is an extra haul, no matter how the product goes out. The only difference is that of course the Mississippi Central has other connections at Hattiesburg.

In connection with that, I may be anticipating somewhat, and perhaps this should come in rebuttal, but I presume that the defendants will lay some stress upon the point that they are compelled by competition to accord main-line rates to the Mississippi Central, and in that connection I want to refer to the status of the rates on the Fernwood & Gulf and other tap-line connections of the Illinois Central at the time rates were established by the Illi-

84 nois Central in connection with the Mississippi Central. Covering that point I offer this statement in evidence as Exhibit No. 6.

(The document was thereupon received in evidence, marked "Complainant's Exhibit No. 6, Witness Kimball," and is forwarded herewith.)

Mr. PALMER. The gist of this exhibit is Note C, on page 58, of Illinois Central Tariff 506-A, I. C. C. No. 39969, which I notice, by

the way, has very recently been superseded by Speiden's Mississippi Valley Western Tariff. I have forgotten the number of it now.

Exam. SMITH. It will show on our copies what it has been superseded by.

Mr. PALMER. Yes; in fact, I just ran across that tariff the day before I started up here, and I did not have time to revise my exhibit. Anyhow the point is that at that time the Mississippi Central was actually carrying the rate back to the log from the Fernwood & Gulf and other lines similarly situated, for certain favored shippers, and in those cases there was no competition.

Our contention is that under these circumstances the rates both as compared with the Mississippi Central and as to the favored interests mentioned, was discriminatory against local points on these tap lines, and that the defendants are not in position to claim
85 at this time that any distinction should be made between the Mississippi Central, for instance, and the Fernwood & Gulf, on the ground of competition.

Along that same line I will file Exhibit No. 7, which sets forth a couple of cases, and in Speiden's Tariff 193 and 159, where the Illinois Central participates in Group 1 rates from points on the Mississippi & Western and the Alabama & Mississippi, via the Gulf, Mobile & Northern, via Ackerman, which point is just outside the boundaries of Group 1 and in a lower rated group. That is in addition to routing No. 5 in Speiden's Tariff, I. C. C. No. 193, which applies on traffic from the Gulf & Ship Island and the New Orleans Great Northern via Jackson, and routing No. 90 in I. C. C. 159 covering traffic from the New Orleans Great Northern, and routing No. 25, covering traffic from the Gulf & Ship Island.

(The document was thereupon received in evidence, marked "Complainant's Exhibit No. 7, Witness Kimball," and is forwarded herewith.)

Mr. PALMER. In other words, the point is that notwithstanding the Gulf & Ship Island and the New Orleans Great Northern are comparatively large roads as compared to the Fernwood & Gulf, at the same time they involve a two-line haul, the same as the Fernwood & Gulf, whereas in the two cases covered by my Exhibit
86 No. 7, it participates in a three-line haul on a group rate via a junction practically within the originating territory.

Mr. HUMBURG. Mr. Palmer, I suppose these tariffs, I. C. C. 193, shown on Exhibit No. 7, and also the other tariff below, I. C. C. 159, on the same exhibit, show, both of them, the application of this rate via other routes?

Mr. PALMER. Yes.

Mr. HUMBURG. In connection with the Mobile & Ohio and other roads?

Mr. PALMER. Yes. That is all, I believe, unless you think of something more before you get through.

Cross-examination:

Q. (By Mr. HUMBURG.) Do you know how much higher the rate was from Knoxo and from Fernwood to the Ohio River at the time that your sawmill was located at Knoxo?

A. Yes.

Q. How much was it?

A. Two cents.

Q. You knew at that time, I take it, that there was this difference between the rate from Knoxo on the one hand and from Fernwood on the other?

A. Yes.

Q. That is true also as to Tylertown, I take it, or was Tylertown located after the location of Knoxo?

87 A. Tylertown was located a good many years previous to the location of Knoxo, and Tylertown takes the main-line rate as a connecting point.

Q. That is located on the N. O. G. N. Railroad?

A. On the N. O. G. N. Railroad; yes.

Q. The same as Fernwood is located on the Illinois Central?

A. Yes.

Q. Did Tylertown at the time you located your mill at Knoxo take a rate two cents lower than the rate from Knoxo?

A. Yes.

Q. What other mills are there at Knoxo than yours which are manufacturing lumber articles?

A. There is one small mill which has been put up within the last few weeks in the woods south of Knoxo and has been hauling their lumber up to the station.

Q. Is there not also located at Knoxo some kind of a mill that makes cooperage stock or other material?

A. No, sir.

Q. Are there not along the line of the Fernwood & Gulf at points other than Knoxo, Tylertown, or Fernwood, mills that manufacture cooperage stock, box material, or other lumber products?

A. There is one other mill.

88 Q. Only one other there now?

A. There is only one other mill that I know of on that line now.

Q. Making lumber?

A. Making lumber.

Q. And that is the one indicated by your cross?

A. Yes.

Q. West of Tylertown?

A. West of Tylertown.

Q. Are there any other mills that are manufacturing box materials?

A. No, sir.

Q. Or cooperage stock?

A. No, sir.

Q. Were there any such mills there during the time for which you claim reparation here?

A. No.

Q. Is it not true that there is an industry at Vaughts, Mississippi, or a manufacturer making cross-ties?

A. Not to my knowledge.

Q. Isn't there some one at Davo manufacturing piling and lumber, namely, the Colonial Creosoting Company?

A. The facts in that case are that piling and cross-ties are occa-
89 sionally hauled in by farmers or other individuals which are the products of manual labor and not, as you originally designated them, as manufacturing plants.

Q. The fact, however, remains that there are a number of so-called lumber companies or creosoting concerns, or pine timber companies and individuals manufacturing lumber and ties and piling all along the line of the Fernwood & Gulf, for the entire twenty-seven miles, wherever there is desirable timber for that purpose?

A. Not as I understand your question to indicate, that such companies as the Colonial Creosoting Company are operating there. They are buying the products of such individuals as may make ties, or piles, or piling, but to say that they have an industry located there, or that they are located, why I consider they are not. They make their purchases wherever they happen to be able to secure them.

Q. Your view is, and that may be the fact, I don't know, that these things are made or manufactured by the owners or contractors doing business there, and sold perhaps to the creosoting company and others who are shipping from there?

A. Yes.

Q. And of course the freight paid, if you know, is higher than is the freight paid from the junction point?

A. I presume so.

Q. That is the same as the rate from Knoxo?

90 A. Yes.

Exam. SMITH. Pardon me, but let me see if I understand that. This creosoting company that has been referred to, has it any sort of a creosoting plant on the Fernwood & Gulf?

The WITNESS. No, sir; but it has at another place on the N. O. G. N. at Bogalusa.

Exam. SMITH. But it ships from points on the Fernwood & Gulf to Bogalusa, creosotes the piling and sends it out?

The WITNESS. Yes.

Q. (By Mr. HUMBURG.) And the rate on that material is the same as the rate on lumber?

A. According to my understanding; yes.

Q. Can you tell us something about the value of lumber now per thousand feet, of the ordinary grades that you manufacture at Knoxo, compared with its value per thousand feet in 1912 when you located there?

A. The present value is at least double the value of the same class of lumber in 1912.

Q. You submitted an exhibit which shows 162 cars on which you asked reparation up to the present time. You say of those, 31 were consigned to points in Mississippi. Are we to understand from that that this involves the intrastate Mississippi rates as well?

91 Mr. PALMER. Those cars referred to that were shipped to points in Mississippi are not included in the list on which we claim reparation.

Mr. HUMBURG. Then this is not a case which involves the question of Federal control over State rates, I take it?

Mr. PALMER. No.

Mr. HUMBURG. You show 69 cars destined to points on and north of the Ohio River. Can you indicate in a general way your territory north of the Ohio River, without going specifically into the statement, because that would show for itself, but what I mean is, where in the territory north of the Ohio River do you sell largely and most largely?

The WITNESS. I would like a little information in regard to what your question implies. Is it a question of the delivery of the lumber?

Q. (By Mr. HUMBURG.) No; destination. I mean to destinations to which you ship.

A. We sell to brokers in large cities and they ship to various points in the country as they see fit. If you mean the destinations——

Q. That is what I mean.

A. (Continuing.)——of the lumber, I would say that a

92 great portion of the lumber which we ship north of the Ohio River goes to retail yards in Illinois, Indiana, and Ohio.

Q. Then are we to understand, Mr. Kimball, from your Exhibit No. 3, that the points therein shown are the actual destination points, or are they the respective locations of the brokers?

A. The points shown in this list are the destinations, to the best of my knowledge and belief.

Q. In selling to the broker do you sell to him for delivery at these specific destinations, or does the broker hold before you the usual blind?

A. It occurs in both ways. In the most of our dealings with one firm who handle a good deal of our output, they tell us the destination, and even the consignee, or their customer's name.

Q. That is the exceptional broker?

A. That is the exceptional broker. The usual broker will pay us a price delivered at the mill or delivered on a Chicago rate, or possibly a St. Louis rate, and he will then ship it to some other point, possibly in Ohio, where he has made a sale. In numerous instances we ship to Mounds or Cairo, or other reconsigning points on the I. C., according to the request of the broker to whom we make the sale.

Q. The general rule in the handling of all shipments

93 through the broker is that he requests you to consign it to Mounds, for example, or some reconsigning point, his purpose

in doing that being so as not to disclose to you who his customer is, and then in due course he sends on the bill of lading to the carrier and says to reconsign that now to my customer.

A. Yes.

Q. And he pays his reconsignment charge under the tariff and the shipment moves on; that is the usual way in which it is handled?

A. That is the usual way.

Q. In making your sale on such a shipment as that, you haven't in mind the freight rate to the ultimate destination to which that broker sends that car?

A. No, I have not; but I have in mind the fact that we have to absorb the two-cent arbitrary to compete with other sawmills in our territory, whether it goes to a reconsigning point or otherwise.

Q. In what proportion of instances have your shipments been through brokers as compared with the proportion of instances in which you would ship direct?

A. Why, with the exception of the Illinois Central Railroad, we sell almost entirely to brokers, except during the war period, which was abnormal, and we handled all of our business through the Southern Pine Emergency Bureau.

94 Q. The remainder of the shipments you say go to the Illinois Central as company material?

A. As company material.

Mr. PALMER. And some to New Orleans for export?

The WITNESS. Some to New Orleans for export; yes.

Q. (By Mr. HUMBURG.) This New Orleans export traffic, I take it, is not here involved?

Mr. PALMER. No.

Q. (By Mr. HUMBURG.) In figuring your selling price of lumber you have to take into consideration, I take it, many things aside from the freight rate?

A. We have to take into consideration all costs, the tendency of the market, the shortage of that particular commodity, if it should be short, or the surplus stock which may be held, so far as we know.

Q. The grade and cost of production?

A. Yes, sir.

Q. The cost of the timber?

A. Yes, sir.

Q. The expense of getting the timber out of the woods and into the mill?

A. Yes.

Q. And in that respect the other man has to take into consideration the same things?

95 A. Yes. We do not differ in any way that I can recall, from our neighbors around there.

Q. One man gets his timber near the mill, another man hauls it in by rail, and a third man drags it in by a drag right to the mill?

A. Yes.

Q. You said something about the manner of making the sales f. o. b. mill and f. o. b. destination point. Did you have in mind also f. o. b. reconsigning point? Is that ever taken into consideration?

A. We sell f. o. b. mill or f. o. b. main-line rate, or f. o. b. reconsigning point, or possibly on a Chicago rate, although the lumber might not ever be intended for Chicago.

Q. Yes.

A. In other words, in a sale of that kind the Chicago rate is merely intended to establish the deduction which will be made for freight charges from the net price.

Q. A shipment may go to some entirely different point?

A. Yes, sir.

Q. You simply use that as a sort of a trade proposition between you and your purchaser?

A. Yes.

Q. The fact that you will sell it to them f. o. b. Chicago does
96 not ordinarily mean that your purchaser really sends it to Chicago?

A. No, sir.

Q. In many cases he does with you in that respect as he does about the reconsigning at Mounds?

A. Yes; that merely establishes the freight rate to be deducted from the delivered price.

Q. Is it not more nearly accurate to say that it establishes the price rather than the freight rate?

A. Yes; that would be correct.

Q. Is it not true, Mr. Kimball, that there are along these few short roads that you have cited such cutting of timber and cutting of piling and manufacturing of lumber by individuals, other than big sawmills, exactly like there is along the line of the Fernwood & Gulf?

A. As far as I know, there are small operations along these other roads, the getting out of wood for pulp mills and pine knots for rendering plants at different points; not many of them; also hewn ties and piling.

Q. And those articles take the lumber rate?

A. As far as I know; yes, sir.

Q. Piling moves some considerable distance, does it not?

A. Yes.

Q. A desirable tree piling would go according to the demand
97 for it; distance would not make a very material difference?

A. It is the exception rather than the rule to ship piling any great distance as far as I know. The piling consists of two kinds, hewn piling and round peeled piling. The hewn piling is frequently sold to exporters and to railroad companies, and the round peeled piling is sold to railroad companies and used at creosoting plants.

Q. Is it not true that there is quite a considerable movement of this yellow pine piling to the Great Lakes for foundation purposes, breakwaters, and so forth?

A. I only know of one firm that makes any considerable shipments from that territory to northern points.

Q. And where are they doing business?

A. They are in the vicinity of Hammond.

Q. Are they located on one of those short lines that you cited?

A. I am not quite clear how they handle their piling out of the woods.

Q. Their office, you say, is at Hammond?

A. No; they have an office in New Orleans.

Q. I see, but you think they are shipping from the vicinity of Hammond?

A. I think they are shipping from that vicinity.

Q. From one of the short lines connecting there?

98 A. I am under that impression.

Q. You have not made any personal investigation, I take it, to ascertain whether there are any box factories on the short roads you have mentioned?

A. I have never taken occasion to look into it, but I don't know of any.

Q. How do you get the information upon which you based your evidence that there are no sawmills at several of these short roads that you have mentioned? Is that all based on the Red Book?

A. No; that is from personal observation traveling through the country by train or automobile, and from conversations with buyers of that class of material; driving through the country looking for sources of supply for their inquiries.

Q. Your competitors for the same kinds of lumber that you have, I understood you to say, you regard as being located in all of the Southern States. Have you any on the west side of the river in Arkansas or in Georgia east of the Mississippi Valley territory?

A. I don't know accurately, but if a mill west of the Mississippi River would make a delivered price on a carload of a certain kind and size of lumber, delivered up in territory we ship to, I am quite sure that any one of the brokers we do business with would buy it if he considered it a good purchase.

99 Q. Naturally, that is what any broker does do.

A. Any broker does that; yes, sir. So far as I know they are as much our competitors in the territory north of the Ohio River as the mills on the east side are.

Q. That is true also of the mills farther to the southeast?

A. Yes, sir.

Q. In Georgia and Alabama, if there are any of them?

A. Yes, sir.

Mr. HUMBURG. I think that is all.

Q. (By Mr. GREEN.) Mr. Kimball, haven't there been since the Fernwood & Gulf was installed out there quite a number of sawmills on that road?

A. There have been a number of small sawmills that have operated for a year or two, exhausted their timber and have gone out of business.

Q. During this war period were there not quite a number of portable mills, and are there not quite a number of portable mills, that hauled their lumber into this line and moved it out over it?

A. Well, "quite a number" is rather indefinite. I would like to know——

Q. You make it definite. I don't know; I am just asking the question in a general way.

A. There were some.

100 Q. There were some. Now, how many of them were there, Mr. Kimball?

A. There may have been some that I don't know about, but I have in mind—did you say during the war period?

A. During the war period and up to the present time.

A. I call to mind five.

Q. Five?

A. Yes.

Q. What was the average output of those portable mills, please, sir?

A. The average per month?

Q. Per day, or per month, or any figure, just so as to get it before the commission.

A. My idea is that they would produce five or six cars a month.

Q. Five or six cars a month?

A. Yes, sir.

Q. That is all of them together?

A. No; each mill.

Q. Each mill?

A. Yes; each mill might put out as many as five or six cars a month.

Q. Is it not a fact that during the last three years, say, of this extremely high price for lumber, that there have gone into

101 business a great number of these portable mills throughout our entire section down there?

A. A great number have gone into operation at different points, but they don't have any great supply of timber, and they are short lived.

Q. They cut out that tract of timber and then move to some other tract?

A. They move on to some other place, somewhere else. One man may operate at two or three different localities.

Q. And they have to have the same movement and the same freight rate troubles that you have got?

A. Provided they get on the same railroad we are on.

Q. Upon the same railroad, yes. You made some statements with reference to these other short lines here. Is it not a fact that there were operations of this kind throughout the entire pine-producing territory during this period to which I make reference?

A. Do you mean during the——

Q. The period of high prices for lumber.

A. Yes; the small operations developed at different points.

Q. Do you know, or could you undertake to say, how many small operations there were along these lines to which we have made reference here?

A. Do you mean that are shown in this map?

Q. Yes; on the lines shown in this map.

102 A. I would not undertake to say. I haven't enough knowledge to make any statement in regard to it.

Q. I see. But from your knowledge of the conditions down there, there were operations of this kind and character during this high-priced lumber period?

A. There were some.

Q. Yes.

A. Yes, sir.

Q. The extent of them you don't know?

A. The extent of them I don't know, except in a general way, that it was not large. That is, the output was not of a great volume.

Q. With reference to the output not being large, does that refer to each of the mills, or to the aggregate total?

A. To each of the mills. I was referring to each of the mills.

Q. You haven't any idea as to the aggregate total output of each one of these small operations from these several roads?

A. I don't think I understand your question clearly. You say the aggregate amount of each one of them?

Q. No; the aggregate tonnage.

A. The aggregate tonnage of all the mills?

Q. Yes.

103 A. That is a matter that I have no means of telling. That is outside of my business and I would not be in a position to know.

Q. Your testimony, then, excludes this phase of the situation?

A. My testimony in regard to what particular?

Q. The aggregate total output of these small mills.

A. Yes. I don't know what it may be.

Q. With reference to the amount of tonnage taking lumber and lumber rates off of the Fernwood & Gulf, do you have any accurate conception as to how your output compares with those other outputs that are tributary from these sources to which I have made reference?

A. I know that over a period of several years we have been the largest individual producer of tonnage for the road, but beyond that I am not able to state.

Q. You can not give the commission the proportion, then, between the aggregate output of other producers and your production?

A. I do not feel competent to do that; no, sir.

Q. As I understand your operation, your mill has a capacity of 45,000 feet per day?

A. Generally speaking; yes.

Q. Is it not a fact that during the period in question you
104 have had to run your mill double time, both night and day?

A. No, sir.

Q. You have not?

A. No, sir; we have not.

Q. Did you ever have to run it night and day?

A. Never have.

Q. You never have run it night and day?

A. Never have run it nights at all. No night operations.

Q. No night operations?

A. No, sir.

Q. I will ask you, Mr. Kimball, to state when you went to locate your mill at Knoxo, Mississippi, weren't you familiar with the fact that this arbitrary was in existence, and at Tylertown, at that particular time, by reason of facts which will be later developed, there was no arbitrary?

A. I was familiar with that.

Q. Yes.

A. But there are other conditions attaching themselves to the question of our location there which your question does not disclose.

Q. Tylertown is substantially six miles from Knoxo, and southward from Knoxo there runs the branch of the N. O. G. N. Railroad?

A. Yes, sir.

105 Q. And if your location had been had upon the N. O. G. N. road, you were aware that by so locating you would have enjoyed the benefit of the grouping rate applicable to this section?

A. We knew that. I knew it.

Q. Now, is it not a fact that when you went to locate your mill at Knoxo that the question of this additional rate via the Fernwood & Gulf was under discussion with the persons of whom you purchased the timber, and of whom you obtained your mill site, and that you made a written agreement with them by which you obtained your mill site and agreed as a part of the consideration to let your timber move over the Fernwood & Gulf Railroad?

A. That is a fact, and there is an additional fact that at that time the representatives of the corporation to whom you refer represented to us that it was their expectation and intention to extend the Fernwood & Gulf Railroad into Columbia, whereby we would have been given a cheaper export rate than we could get as the line has existed up to the present; and while we were aware of the existing two-cent arbitrary, we were influenced to locate at Knoxo by the fact that they expected to extend their line so we would get a cheaper export rate.

The members that composed the firm of the Swift
106 Lumber Company were more familiar with the export lumber market than they were with the interior market, and their intention in manufacturing this standing timber was to make export material out of it. It was the expectation of the owners of the Fernwood & Gulf Railroad at that time to extend their road to Columbia, and had they done so we would have enjoyed a lower export rate than we have had. We took for granted that they would carry out their intentions and their expectations as stated to us at that time, but on account of other matters which came up the road was not completed according to their intention.

It was our expectation to ship a large portion of our output to Gulfport and only have a small portion of our output marketed in the territory north of the Ohio River, generally referred to as the interior market. The facts subsequently developed changed all those expectations.

Q. I will ask you to look at the document I now present you and state whether or not that is a copy of the instrument in question.

Mr. PALMER. I would like to know what the object of this is?

Mr. GREEN. You will see that it has some little bearing. I will try to make the connection.

The WITNESS. Do you wish me to answer?

107 Q. (By Mr. GREEN.) Yes.

A. As near as I can tell from my recollection, I should say that this is a correct copy of a certain ageement which the Swift Lumber Company entered into with the Fernwood Lumber Company, whereby they secured to us a right of way for our lumbering or logging railroad.

Q. I will ask you, please, sir, to mark that as Exhibit 8 to your testimony. I ask to have that done in order to see if we can not get away from here to-day, as this will avoid the use of an extra witness.

(The document was thereupon received in evidence, marked "Complainant's Exhibit No. 8, Witness Kimball," and is forwarded herewith.)

Q. (By Mr. GREEN.) Mr. Kimball, the Fernwood & Gulf has just now been completed up to a junction with the N. O. G. N. Railroad at Columbia, has it not, at Foxworth, Mississippi?

A. That is my understanding.

Exam. SMITH. Is that near Columbia?

Mr. GREEN. Yes.

The WITNESS. My understanding is that that is so.

Q. (By Mr. GREEN.) You have made no complaint, as I understand it, of the export rates in this petition?

Mr. PALMER. No; that is not included in the complaint.

Q. (By Mr. GREEN.) Do you know, Mr. Kimball, what the
108 underlying causes of the non-extensions were, to Columbia?

A. I have been told that it was on account of adverse legislation against railroad companies, Government legislation against railroad companies.

Q. What amount of influence did the European war and the inability to purchase rail, have on the non-extension of that enterprise?

A. None at all.

Q. None at all?

A. According to my understanding the Fernwood & Gulf had bought and owned and were in possession of rail enough to put it through if there had not been unfavorable legal cases against the railroads generally referred to as tap lines.

Q. What have you to say as to the cross-ties and labor?

A. The Fernwood & Gulf owned a large quantity of cross-ties which they afterwards sold; but the question of labor during the years 1917 and 1918 was enough to prevent their extension of the line during those years. But at the time I referred to their expectation of extending the line to Columbia, labor was plentiful and prices were low. This was during the years of 1912, 1913, and 1914.

I may have gotten off of the point there.

109 Q. They had an expectation of extending and you had an expectation of that extension, in order to get the reduced export rates?

A. Yes, sir.

Q. No contract of that kind was made?

A. None at all; they told us they expected to put the railroad through to Columbia by the 1st of January, 1912, but there were no promises made us, and there were no contracts entered into.

Q. As I understand your operations, Mr. Kimball, you are export people?

A. Yes.

Q. And you knew the export game——

A. Better, yes.

Q. And you were not acquainted with the interior business substantially at all?

A. That is practically correct. I had had some experience in the interior, but the other members of the firm had not.

Q. As I understand it, there is a radical and practical difference between the export market and the interior market in lumber. Please explain the difference to the commission.

A. There is a great difference in the method of handling lumber; there is a difference in the process of manufacturing lumber

110 for export as against lumber intended for interior points. Export lumber is shipped rough, it is cut full to allow for shrinkage, and the sizes, dimensions, and grades are different from those generally used in the interior markets.

The rules of grading are entirely different; the customs are different in some ways; and in building a sawmill a manufacturer usually has in mind the markets where he intends to sell his output, and he builds his mill with the idea in view of making his lumber as cheaply as possible in sizes and lengths which will conform to the market he intends to sell in. Generally speaking, the export market

takes large sizes and rough material. The interior market takes boards and dimension, and requires that they be dressed.

Q. When did the export market stop?

A. July, 1914. It stopped just like that, too. [Snapping fingers.]

Q. After July, 1914, there was no more export market?

A. Practically none.

Q. At that time you had no selling representatives in the interior, and no member of your firm except you, in a slight degree, were familiar with the interior lumber game?

A. That is correct.

Q. I notice in the deed of the right of way it is stated
111 there that you have an anticipated operation of seven years.

A. That represents our expected life of operation when we went there, based on the timber we had purchased and the timber we felt reasonably sure we could secure.

Q. So the size of your mill was predicated upon the fact that you had a seven years operation?

A. Yes.

Q. As I understand the lumber business, it is a requisite that there should be allocated to a reserve depreciation a sufficient amount out of the cutting of each thousand feet to at the end absorb the value of your mill?

A. That is the theory of the Federal Trade Commission, but my observation has been that it is customary among the mills to write off depreciation annually into profit and loss instead of setting up a reserve. It is merely a difference in method.

Q. So that if your operation is projected beyond the expected period, what is the effect on your business as to netting a larger profit than would otherwise be the case?

A. The longer we are able to prolong the life of the plant, the more service or work we get out of it, the more value it has to us.

112 Q. Is it not a fact Mr. Kimball, that by reason of the location of this timber out there in that territory, that the arbitrary existing on this railroad was figured into the price when you made the purchase?

A. I can not say that it was. We naturally bought the timber as cheaply as we could. The fact that that timber was not close to either the Fernwood & Gulf Railroad or the New Orleans Great Northern Railroad left us somewhat isolated, and it was necessary to go to considerable expense before the timber could be moved.

Q. You would not tell the commission, would you, that these disadvantages which you have enumerated did not find expression and were not indicated in the price that you paid for this timber?

A. I have just stated that these disadvantages, and the fact that the timber was away from the railroad, did influence the price. We bought it as cheaply as we could, and these things influenced the owners of the timber to accept a lower price than they would if that

timber had been standing close to a railroad where it could have been logged at a less expense.

Q. Now, is it not a fact that by reason of the position of this timber, that you have no great amount of trouble with your labor? In other words, that your sawmill labor can be obtained in the territory where you are off of the main line railroad, at a price
113 that is lower than would normally be the case on the through avenues of transportation?

A. Well, that is a question that is subject to debate. We have not been troubled with strikes or organizations. We have at times paid our men less than other sawmills that were on a main line, and had more competition, but it is also true that we get a very inefficient class of labor, and that they are not to be depended upon the year around. At certain seasons of the year they leave our operation and go to work on their own farms or the farms of their neighbors, which operates to our disadvantage. It is a subject of discussion.

Q. These people have their homes around in your vicinity?

A. A number of them have.

Q. And they have a spare time when they are not in the crops, which spare time is utilized by you for the production of this lumber?

A. Yes; for the production of lumber.

Q. As I understand the selling price, there is no uniform quotation as there is on the cotton exchange or the board of trade in Chicago?

A. There is not. It might be likened to a series of trades wherein each man makes the best trade he can.

Q. When you go to make a trade there are in each indi-
114 vidual trade elements that have got to be worked out to the satisfaction of both parties?

A. That is true.

Q. Is it not a fact that you have sold your capacity during all of these years?

A. We have.

Q. And you have sold it at prices that you were willing to take for it?

A. Willingness might indicate something that did not quite exist at times. We were forced to move our lumber because it was such a bulky commodity we could not pile it up. We have been obliged at times to sell lumber for less than the cost of production.

Q. But that was back some years since, was it not?

A. That was in 1913, as I remember it.

Q. And for the movement that occurred in 1913 and 1914 there has been no protest made nor claim for reparation filed with the commission on the ground of the unreasonableness of the rates?

A. By us?

Q. Yes.

A. No, sir; not by us, for the very simple reason that we did not know that we had an opportunity to get rid of it.

Q. I beg your pardon.

115 A. I say for the very simple reason that we did not know there was any opportunity to get rid of it.

Q. Where did you get the idea that there was an opportunity to get rid of it?

A. We were informed by one of our customers that his traffic man informed him that this two-cent arbitrary which we had been paying for a number of years was illegal, I think, was the term he used. However, I don't intend to accuse the Fernwood & Gulf Railroad of illegal practices, but he said it could be set aside.

Q. You and the Fernwood & Gulf went along there for about six years perfectly happy until some foreign traffic man came in and said that this arbitrary business was illegal, and that is what started this lawsuit?

A. The question of peace and happiness might be said to continue to a certain extent. We were informed by this foreign traffic man that we were entitled to a main-line rate, and if we were entitled to it we wanted to get the benefit of it under the law.

Q. When did that information come to you?

A. I do not recall the date, but I have the letter in the file. I should say that it was something like the 1st of January.

Q. Of the current year?

A. Of 1919. If you will allow me to refer to this——

Q. Never mind about that; I don't care about it.

116 A. All right.

Mr. PALMER. All right. We can show you the letter if you want it.

Mr. GREEN. All right, if you want to put it in, but I don't care about it.

Q. (By Mr. GREEN.) As I understand it, the selling price of lumber is dependent on a great many other elements than merely the freight rate?

A. The selling price?

Q. Yes.

A. The freight rate has very little to do with the selling price.

Q. At the present time is it not a fact that if you can deliver lumber you can get a premium for it over what is currently said to be the list?

A. The price of lumber has been above the list for some time back, since, approximately, the fourth or fifth month of the current year.

Q. Where did you get that list?

A. The present list that I refer to was published by the Southern Pine Emergency Bureau, based upon maximum prices established by the War Industries Board, Lumber Department.

Q. As I understand you, the present list, then, is an outcome

117 of the United States Government acting through its war machinery?

A. That is correct; the list I have reference to.

Q. Will you please tell the commission how much over this list the price of lumber has now gone?

A. You mean at this date?

Q. Yes; right now.

A. Between five dollars and ten dollars.

Q. Isn't it even more than that in some grades?

A. In 1 x 4 flooring the price has gone up very high indeed.

Q. For instance, take your flooring; and is not the wholesale price of the best grade of flooring now in the neighborhood of $100 a thousand?

A. The present price of the highest grade of lumber that we produce is $80 per thousand at the mill. The point I have in mind is the edge-grain flooring is selling for about $100, but we do not make edge-grain flooring.

Q. I see. Will you please tell the commission the cost of producing this grade of flooring that you are selling on the basis of $80 a thousand?

Mr. PALMER. What is the object of that? I don't see that that has anything to do with the case.

The WITNESS. The cost of producing this grade of flooring is no more than the cost of producing the lower grades.

118 Q. (By Mr. GREEN.) About what does that average; please sir?

A. You mean at your operation?

Q. Yes, sir; at your operation.

A. About $27 a thousand feet.

Q. Will you please tell the commission what the average selling price of your output is at the present time?

Mr. PALMER. I want it understood that all this is going in subject to our objection.

Mr. GREEN. All the questions we are discussing now were threshed out back in the Central Yellow Pine case, as I understand it.

The WITNESS. The average selling price of our output for the past few months has been in the neighborhood of $35 a thousand for all grades.

Q. (By Mr. GREEN.) Now, will you please state whether or not you contend, as of the present date, that your rate to these points is in and of itself unreasonable?

Mr. PALMER. I think that is a question of argument. We allege that it is unreasonable.

The WITNESS. I don't know exactly what you mean by unreasonable.

Q. (By Mr. GREEN.) Mr. Kimball, approximately how long before the timber, and all timber tributary to the Fernwood & Gulf, will be cut off?

119 A. Within a very few years.

Q. Will you please state whether or not the approximate tonnage of the Fernwood & Gulf Railroad does not consist of approximately 95 per cent lumber and forest products?

A. That is the idea of the proportion as it exists in my mind, without the support of any actual figure.

Q. Now, will you please tell the commission what will be the condition of the Fernwood & Gulf at the end of this short period to which you made reference, when this timber is all cut off?

A. Their tonnage would be greatly reduced.

Q. Wouldn't it be practically annihilated?

A. I would not go so far as to say that, because other occupations are taking place. There has been some considerable movement toward truck farming in that neighborhood, and while the present amount of tonnage is not great, there is always a possibility of improvement in it. But unquestionably the tonnage of the Fernwood & Gulf Railroad Company will be greatly reduced.

Q. At the present time do you have any trouble in selling your lumber on an f. o. b. basis at your mill?

A. It is a fact we have no more trouble selling f. o. b. mill than we would f. o. b. delivered.

Q. I know, but is it not a fact that you can sell all of your lumber f. o. b. mill?

120 A. Yes.

Q. And you can sell your lumber f. o. b. mill at a price $5 to $10 a thousand over the list put out by the War Industries Board?

A. That is a fact.

Q. Do you know what other people around about your neighborhood are obtaining for their lumber?

A. So far as I know they are getting the same prices we are.

Q. With reference to these contests about the arbitraries, adding on and taking off, that you were speaking of to Mr. Palmer, when did those transactions occur?

A. I beg your pardon; were you referring to me?

Q. Yes.

A. Oh, I beg your pardon. I did not get that. Will you please repeat the question?

Q. Read the question.

(Question read as above recorded.)

A. I don't think I get the connection.

Q. In other words, as I understood your testimony, you were having considerable difficulty in moving your tonnage by reason of these arbitraries on the rate, and there were discussions of it, and I wanted to fix the date of those discussions.

121 Mr. PALMER. You mean those cases where he said he had sold lumber delivered, and the buyer would deduct the arbitrary nevertheless.

The WITNESS. I understand the gentleman now. These transactions occurred back in 1913 and 1914.

Q. (By Mr. GREEN.) Since 1913 and 1914, as I understand it, you have not had any of that kind of trouble?

A. I have taken occasion to explain our position, of being under a two-cent arbitrary, and have advised them of that fact in making our quotations, except, of course, those with whom we were doing business regularly and who understood conditions.

Q. That condition obtained back in 1913 and 1914 and has not caused any friction since that date, as the parties to it understood what you were doing?

A. Yes; that is true.

Q. Do you know, please, sir, anything about the real history of the rate development down in that territory? If you don't just say so, and I won't ask you any questions about it.

A. No; I don't feel competent to answer that question intelligently.

Q. Are you in a position, Mr. Kimball, to know anything about the number of short-line railroads and plussing junction points in the United States?

A. No; I do not. I never had any occasion to look into
122 it or make any inquiry about it.

Q. How much is the price of stumpage, or how much has the price of stumpage advanced since you bought your stumpage?

A. It has doubled in value.

Q. Is it not a fact that an individual producer of lumber, by reason of making specific grades in a certain way, can obtain considerably over the market for those grades in which he specializes?

A. I don't believe I gather the point, Mr. Green.

Q. Will you read the question, please?

(Question read as above recorded.)

A. No; I think not. He can work up a good reputation for a well-manufactured product and obtain a small advantage in price, but I never considered that it was such as to have any great bearing against the open market. He would get the preference during a dull period, but that is not the case now.

Q. When you were speaking of the controlled roads in this territory, what knowledge have you of those facts; that is, personally?

A. I have been traveling around through the territory mentioned for several years past, and I have seen these lumber companies bringing in their logs over these roads. I have been told upon reli-
123 able information, and I consider it to be a matter of common knowledge, that these roads I referred to as being controlled by these lumber companies were built for the express purpose of bringing the standing timber which these companies owned to the mills that these companies had built.

Q. Now, if that is a fact, will you please explain why the Mississippi Central built 160 miles from Hattiesburg over to Natchez?

A. They have never favored me with their reasons for doing it, but I know it to be a fact that they began building the road to get to the timber which they owned along the line of the road. As to why they purchased a road which had been built out from Vicksburg——

Q. Hattiesburg.

A. No; I am talking about the west end of their line.

Q. All right.

A. Why they purchased a road which had been built out from Vicksburg——

Mr. PALMER. Natchez.

The WITNESS. Yes, I am wrong; from Natchez, and joined it up with a road which they had extended through their own properties; I can only conclude that they looked upon it as likely to be a profitable investment.

Q. (By Mr. GREEN.) Did they not begin at the other end and build over to Natchez?

124 A. I understand not, although I am not positive.

Q. Was not the first part of that road constructed, refreshing your memory, the Pearl & Leas River Road?

A. This railroad at the first time I ever saw it, in 1904, extended from the mills of the J. J. Newman Lumber Company at Hattiesburg and at Sumrall in a westerly direction to a station named Silver Creek.

Mr. PALMER. Just to clear that up, my understanding is that the Mississippi Central was built west from Hattiesburg to Brook Haven. The west end of the present Mississippi Central was built east from Natchez and originally known as the Natchez & Eastern, and was completed into Brook Haven about the same time, and they met there, and the Natchez & Eastern was first leased by the Mississippi Central, and then consolidated with it. That is according to Poor's Manual. I think that makes clear some of the questions Mr. Green has asked.

Q. (By Mr. GREEN.) Now, of your own personal knowledge, do you know anything about the segregation of the Fernwood & Gulf from the tap-line controversy under an order of the commission, when you spoke of it as being controlled by the Fernwood Lumber Company?

A. It is merely a matter of hearsay with me that the Fernwood & Gulf Railroad was divorced from the Fernwood Lumber

125 Company a few years ago, and that the officers of the Fernwood & Gulf have no official position with the Fernwood Lumber Company, and vice versa. But further than that I am unable to say.

Q. It is just a matter of hearsay with you?

A. Just a matter of hearsay; yes.

Q. The actual facts you don't know?

A. I don't know the actual facts.

Q. The same thing is substantially true, is it not, Mr. Kimball, with reference to these other little roads?

A. I understand that such is the case, growing out of the adverse legislation that I referred to in one part of my testimony, as being the probable cause for the nonextension of the Fernwood & Gulf Railroad into Columbia, in 1912.

Q. Do you know, please, sir, how much of the timber has been cut off of these little railroads? For instance, take the K. & S. E.; how much of the timber is cut off of there now?

A. It has been greatly reduced. You might say it is reduced to a small per cent of the original crop.

Q. I was in error; I should have said the K. & E., instead of the K. & S. E.

A. All right.

Q. You don't know anything about the K. & S. E.?

A. No. The K. & E. I had reference to.

126 Q. Is it not a fact that all of the timber was cut off of the K. & E. by as many as, say, thirty small mills operating at one time until the timber along its line was all manufactured into lumber?

A. I know that there were a number of small mills, but I am of the opinion that the number thirty is too high. I should be inclined to place it at about half of that, or possible twenty mills; but I have not full and accurate knowledge of it.

Q. The cutting by these mills along this line moved, did it not, under an arbitrary of 1½ cents plus for that timber coming off of the narrow gauge, 50 cents a thousand additional for transfer?

A. I think the best answer to that would be the tariff covering it; my understanding is that the statement you made is substantially correct, but I think the tariff would be better evidence, if you will excuse the suggestion.

Q. With regard to this compilation of sawmills which has been turned in, those did not include any portable mills at all, did they?

Mr. PALMER. I guess I can answer that better, as I made up the list. It does not. I do not understand that the Red Book includes small portable mills.

Exam. SMITH. It was not the intention to include them?

127 The WITNESS. It was not the intention to include them.

Mr. GREEN. If any are in there, it is by accident?

The WITNESS. It was intended to represent substantial industries.

Mr. GREEN. It does not include these mills that have cut out their timber and moved during the last several years?

The WITNESS. No.

Mr. GREEN. That is all; thank you, sir.

Redirect examination:

Q. (By Mr. PALMER.) There are two or three points I want to debate over. You answered Mr. Green that you had no trouble selling lumber f. o. b. mill, and there was something said about getting the same price at mills on the other road. Did you mean that you get the same f. o. b. mill price as they get?

A. No; I didn't intend to give that impression. Whenever we sell any lumber we get as much as we can for it, but we always have to assume the arbitrary rate there by having the freight bill to destination deducted, or the freight bill to an agreed point de-

ducted, or making the deduction for the excess rate from our net price.

Q. You could get the same delivered price but not the same mill price, in other words?

A. Yes.

128 Q. There was something said about stumpage doubling in value. Is that the case with other mills in that vicinity as well as yours?

A. That question was not sufficiently clear, because I answered the question on the assumption that Mr. Green was referring to our original purchase of stumpage.

Q. But stumpage generally throughout the territory has increased in value?

A. Generally it has increased.

Q. That is not peculiar to you alone?

A. No; that is a general condition.

Q. Now, on this question of unreasonable rates, if a certain rates apply from a point on the Illinois Central, say, fifty miles south of Fernwood, would you consider it reasonable that the same rate should apply to a point twenty-seven miles beyond Fernwood on another line?

A. I would not consider it reasonable.

Q. To apply the same rate?

A. To apply the same rate for hauling lumber 27 miles as for hauling it 50 miles or 75 miles farther.

Q. In other words, if you take the rate from points farther south as a basis for a reasonable rate, then what would you say as to a higher rate from Knoxo, for instance?

129 A. I would say that it would be unreasonable for us to have a higher rate than other points farther away from the destination of the product.

Q. Take the points on the A. & M.; if a certain rate is reasonable down there, down in the southeast corner of this group, what would you say as to a higher rate being reasonable up here in the middle of the group, with a less haul?

A. I should say that the higher rate was unreasonable.

Q. Something was said about your depreciating your mill. Have you depreciated it 100 per cent?

A. No; for the reason that while we began writing off an annual depreciation of 20 per cent, upon an investigation of our books by the examiner for the Government income tax for the years 1913, 1914, and 1915, he refused to allow the depreciation of 20 per cent, but did allow a depreciation of 10 per cent, and we have subsequently adjusted our books to a 10 per cent annual depreciation of the remainder of the value on the books. In other words, at the end of 10 years there would still be a remaining value on our books which we estimate would be the salvage value of the porperty in question.

Q. Now, about this purchase of your timber; in the first place, how far do you log your timber?

A. We have between twelve and thirteen miles of steel, and
130 it is all laid out. Some of it is on branches and side tracks, but we haul our logs approximately twelve miles.

Q. You have a regular logging railroad, the same as the others down there?

A. We have a regular logging railroad and haul our logs to the mill on a logging railroad, as is the common practice with all mills of any size in this territory.

Q. There was something said about your locating on the N. O. G. N.; would that have been physically possible?

A. It would. Do you wish me to elaborate on that?

Q. What I want to get at really is, if the person whom you bought your timber from had known you were going to locate on the New Orleans Great Northern would he have charged you any more for the timber?

A. No.

Q. That did not have any bearing really on the price at all?

A. No; not at all. As a matter of fact, the sellers of the timber did not know where we were going to locate our operation. We did not know ourselves for a while.

Q. You were speaking about the cost of production. The average cost of $27, does that include the stumpage?

A. That includes the purchase price of the stumpage; not its present valuation.

Q. That is an average price?

131 A. An average price.

Q. I mean an average cost.

A. Yes; that is an average cost.

Q. But there are some bookkeeping methods by which you would assign a greater cost of production to higher grades of timber, are there not?

A. The method has been worked out and it has been suggested and set forth by the Southern Pine Association, but we have not adopted it.

Q. In this Exhibit No. 3, the claim for reparation, it goes back to January 1st only. Will you explain what the character of your work was during the war?

A. During the war period, while the War Industries Board for the Government were making purchases of lumber, our output was sold and delivered, about 90 per cent of it, to the Government requirements on Government orders for cantonments, or for the Emergency Fleet Corporation.

Q. How did the prices you got for that compare with those for everybody else?

A. The prices we received were the same.

Q. The freight rate did not really work against you under those abnormal conditions?

A. There was no deduction made from our price for the two-cent arbitrary.

Q. That was the reason you have not gone back into that period in making up your claims?

132 A. That was the reason I did not show the previous shipments.

Exam. SMTH. Let me see now; as I understand the case at the present time, you would be entitled to claim reparation back from and including July 3, 1917?

Mr. PALMER. Yes.

Exam. SMTH. And are you now waiving all excepting from January 1, 1919?

Mr. PALMER. We are not specifically waiving it, but it is a question how much we will be able to dig up which was not subject to these peculiar conditions which the witness has just explained.

Exam. SMTH. Is your statement substantially this, that there were only a few sporadic shipments other than these?

Mr. PALMER. If you get back two years from July we may get quite a number of them, but during the latter portion of that two years I guess they were pretty few.

The WTNESS. There was always some part of our output that the Government did not want.

Mr. PALMER. That is simply an explanation of why we have taken that period as a basis for formal proof of damage at this time.

Exam. SMTH. I see. The question before us to-day is

133 whether there was any unreasonableness in the rates, or whether the rates were unduly prejudicial, and so on, and if the commission should find reparation due, why the parties would be able to check the cars. Is that your understanding Mr. Palmer?

Mr. PALMER. Yes, sir. At the same time, we have to make some formal proof of damage.

Exam. SMITH. Yes. Some shipments did move during the period covered by the complaint?

Mr. PALMER. Yes. I think that is all, except there is one thing I want to get Mr. Green to explain. You spoke about the Fernwood & Gulf being extended to Foxworth. Just where is that?

Mr. GREEN. Right out of Columbia.

Mr. PALMER. Right out west of Columbia?

Mr. GREEN. It would go in on the track of the N. O. G. N.

Mr. PALMER. In other words, that would be the export proposition that Mr. Kimball was speaking about?

Mr. GREEN. As soon as we can get in there it is our intention to go.

Exam. SMITH. Is that the complainant's case?

Mr. GREEN. Just one question, if your honor please: Mr. Kimball, you are not an expert rate man, are you?

The WITNESS. I am not.

Q. (By Mr. GREEN.) When you begin to talk about reason-

134 ableness of rates, that is out of your line?

A. What I consider reasonable and unreasonable would not be based on my knowledge of freight rate bases. It would only be my idea of what was just and fair under existing circumstances shown in the case.

Q. Do you pretend to tell the commission that you could not, at the present time, with the demand for lumber as it is, add this arbitrary to the price of your lumber?

A. We have been doing it. I don't pretend to say that we could not do it, because we have been doing it. It is a fact that we have done it.

Exam. SMITH. Is that all from this witness?

Mr. PALMER. Do you say you have added your arbitrary to the price of your lumber?

The WITNESS. Perhaps I was not quite clear. What I understood him to say was whether we deducted it from our net profits, or added it to the cost of production, which would amount to the same thing. I understood him to mean that.

Mr. PALMER. You mean you added it to the cost of the lumber?

The WITNESS. Yes; the cost of the lumber.

Mr. GREEN. No, I go one step further; is it not a fact that with the present demand for lumber you can get almost any price
135 you want for it, and the tonnage will move if you have got the lumber?

The WITNESS. The price of lumber is not out of all bounds. We can sell every bit we can make and we can move it. We have been able to move it up to the present time.

Q. (By Mr. GREEN.) And the two cents is being added——

A. We have absorbed the two cents.

Q. Have not your purchasers absorbed a good many two cents when you sold f. o. b.?

A. No; they would always deduct from their f. o. b. mill price.

Q. Is that an actual fact, that every one of them deducted it from that price?

A. Where a sale was made by correspondence, I could not say what they did, but they had to pay that extra two cents, and I assume if they did not have to pay it they would be willing to pay that much more. It was a part of the expense.

Q. You mean they could not have just that much more profit when they resold it?

A. Yes.

Mr. GREEN. That is all.

(Witness excused.)

Exam. SMITH. Gentlemen, we will take a recess until 2.00 o'clock this afternoon.

136 (Whereupon, at 1.00 o'clock p. m., December 18, 1919, a recess was taken until 2.00 p. m.)

AFTER RECESS.

2.00 o'clock p. m.

J. L. SHEPPARD was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Q. (By Mr. HUMBURG.) Will you give your occupation, Mr. Sheppard, and your connection with the Railroad Administration?

A. I am the assistant general freight agent of the Illinois Central and the Yazoo & Mississippi Valley Railroad, with headquarters at Memphis, Tennessee.

Q. You are familiar with the rate adjustment involved in this hearing?

A. Yes, sir; I am.

Q. Will you file a map of the Illinois Central indicating the location of the Fernwood & Gulf Railroad, the Illinois Central, the Yazoo & Mississippi Valley, and also Knoxo and other points, including points of destination?

A. I have only two copies of this map, and I would like the privilege of sending the complainants a copy of the map marked, if that will be satisfactory.

Mr. PALMER. That will be all right.

137 Exam. SMITH. Very well, you may do so.

(The map was thereupon received in evidence, marked "Defendants' Exhibit No. 1, Witness Sheppard," and is forwarded herewith.)

The WITNESS. This map is offered for the purpose of general information as to the location of the various roads and the sections under discussion here, and I have indicated by a pencil circle in the lower part of the map the location of the Fernwood & Gulf Railroad, extending from Fernwood, Mississippi, to Kokomo, Mississippi.

Q. (By Mr. HUMBURG.) How long have you been familiar with this rate adjustment, and in that connection what has been your railway traffic experience?

A. I have been connected with the Illinois Central Railroad for about twenty-two years. During the last ten or twelve years I have been connected with the traffic department exclusively, and during the last ten years have been in the rate department, having to do with the adjusting and revising of rates and divisions in this particular territory which is involved.

Q. You have had again and again to do with the lumber rates?

A. Yes.

Q. From this territory to the destinations involved?

138 A. Yes, sir.

Q. What is the character of the lumber shipped from points on the Fernwood & Gulf Railroad?

A. Yellow pine only.

Q. What is the territory of production of yellow pine lumber on the Illinois Central and Yazoo & Mississippi Valley Railroads?

A. Practically the entire production of yellow pine lumber on the two roads named is in the territory south of the Alabama & Vicksburg Railroad, which is shown on the map as extending from Vicksburg to Meridian, Mississippi. The producing territory extends through Mississippi to points in Louisiana about thirty or forty miles north of New Orleans. There is some production of yellow pine on the Illinois Central north of the A. & V. Railway, mills of fair size being located at Canton, Mississippi, twenty-three miles north of Jackson, Mississippi; and at Kosciusko, Mississippi, on the Aberdeen branch. There are also a few other small mills on the Aberdeen branch, but the total production of pine lumber on the I. C. R. R. north of the A. & V. is small.

Q. For purposes of rate adjustment, how is the territory of production of these two roads, the Illinois Central and Yazoo & Mississippi Valley treated?

139 A. For purposes of rate adjustment practically the entire producing territory of the I. C. and Y. & M. V. is included in one group, the same rates having been observed from all points in the group to Ohio River crossings and points taking the same rates; and to the territory beyond the Ohio River crossings, including eastern and Virginia cities. Of course, to territories south of the Ohio River, including points in Tennessee, Mississippi, and Louisiana on the I. C. and Y. & M. V.; that is, points either within the group itself or contiguous thereto, the rates are not grouped or blanketed, but are on a mileage scale or are graded or relatively rated.

From what I have stated it will be observed that it was the purpose of the Illinois Central Railroad and the Y. & M. V. Railroad to apply from its producing district of yellow pine lumber the same rates to the important consuming markets of the country. The exceptions are such as would occur in any group adjustment of rates, and cover points where distances or other conditions must necessarily be considered a factor in the fixing of rates.

Q. What considerations prompted these two roads in establishing one group of rates from their own producing territory?

140 A. In the first place, the character of production was the same. The markets of consumption, that is, the principal markets, were located at considerable distance from the territory of production. It was desirable, therefore, to maintain on a parity all of the mills located on the same line of railroad in close proximity to each other.

In the second place, it was felt necessary to so adjust the rates from the producing section of the Illinois Central and Yazoo & Mississippi Valley as to enable its mills to compete in the principal markets of consumption with mills located in other producing territories.

Further along it will be my purpose to explain more in detail the competing producing sections of yellow pine, and the adjustment of rates therefrom.

Q. When the basis of rates you describe was established by these two roads, were the same rates made applicable from points on connecting lines in Mississippi and eastern Louisiana, and were divisions or proportions allowed to tap lines and similar short connecting roads?

A. The basis of rates established by the I. C. & Y. & M. V. was originally published to apply from stations on its own rails. From points on connecting railroads it was the policy of the roads named to observe combination except where competition compelled otherotherwise.

141 No allowances in the nature of divisions were made to the tap lines or to similar short-line railroads, so called.

Dealing with the situation in 1893, when rates from points on the Illinois Central Railroad were reduced to the level of the rates from points west of the Mississippi River to important consuming markets at the Ohio River crossings and points beyond, the only connections of the Illinois Central in the pine-production section were the Alabama & Vicksburg and a few short or tap lines serving mills reached by the Illinois Central itself. The A. & V. Railway was a part of a system of trunk lines known as the Queen & Crescent System. That road made its rates the same as the Illinois Central Railroad, but its routes were not in connection with the Illinois Central, being a competitor, although it did maintain some through rates in connection with the Illinois Central.

From the tap lines or other short railroads the established basis was combination of locals on the Illinois Central junctions, and dealing with this situation as of 1893 at the time we readjusted our pine-lumber rates to meet the competition from the West, the western producing field at that time was much nearer the consuming

142 territory than it is to-day. They subsequently revamped the western territory, and I will cover that a little bit later on in my testimony. In other words, the pine rate adjustment west of the river started in Missouri, and it was in Missouri and north Arkansas at that time that we undertook to meet this competition from the West.

Q. When in 1893 this adjustment to which you have referred was established, what trunk lines were then operating in this yellow-pine producing territory in Mississippi and eastern Louisiana and what basis of rates did those lines observe?

A. The other trunk lines operating in the territory described were the Mobile & Ohio Railroad, the Alabama & Vicksburg Railway, and New Orleans & Northeastern Railroad, the latter two being part of the Queen & Crescent route, and the Louisville & Nashville Railroad.

These lines established, and with some exceptions maintained, the same adjustment as applied from the Illinois Central stations to

important consuming markets at the Ohio River crossings and the territory beyond.

In other words, Mr. Examiner, they made their rates the same as the Illinois Central, and when the Illinois Central revised its rates they revised their rates, but the Illinois Central had nothing to do with their adjustment.

Q. If you know, what was the general policy of the carriers
143 east of the river in the Mississippi Valley and in the Southeast, which served the yellow-pine producing sections, with respect to the extension of the trunk-line basis of rates to points on short lines, or the so-called tap lines?

A. The policy of all of the roads in the territory referred to was not to apply the trunk line basis of rates from points on connecting lines or short lines. Such rates were either on combination basis or were made arbitraries over the junction point rates, or over the rates from points on the standard trunk lines.

Q. Was this general policy of the roads east of the Mississippi River observed generally by all lines at the time of the reduction of rates in 1893 to meet the rates from producing points west of the Mississippi River, and if there was any change in policy at a later date, will you explain what that change was?

A. The general policy of not extending the trunk line basis of rates to points on connecting or short railroads was followed by all of the railroads in the South for a number of years. Subsequently the Mobile & Ohio Railroad and the New Orleans & Northeastern Railroad extended the trunk line basis of rates to certain of their short line connections, or to tap lines with which they connected.

Just when this change of policy on the part of the Mobile &
144 Ohio and New Orleans & Northeastern was made I am not informed.

Rates from certain of the more important railroads in the sections, such, for example, as the Gulf & Ship Island, the Mobile, Jackson & Kansas City, now the Gulf, Mobile & Northern, were established on the trunk-line basis from time to time; and the G. M. & N. Railroad has in one instance extended the trunk line basis to a short line connection, namely, the Mississippi & Western Railroad, but I am not advised as to when it extended this basis to the tap lines or short lines with which it connected.

The extension of the trunk line basis by the M. & O. and the N. O. & N. E. to their short or tap line connections was first brought to the attention of the Illinois Central in connection with the hearing before the Interstate Commerce Commission of certain cases which occurred in 1904, and which involved the adjustment of rates on pine lumber from the whole southern producing territory, which I will refer to a little bit later on.

Q. Will you now explain, or rather outline in a general way, the territory of production of yellow-pine lumber in the United States, and tell how this territory is divided or grouped by the carriers for the purpose of their rate adjustment?

145 A. The production of yellow-pine lumber in the United States is confined to the southern part of the State of Arkansas, the southeastern part of the State of Texas, the State of Louisiana, the southern and southeastern part of the State of Mississippi, the States of Alabama, Georgia, Florida, and the Carolinas.

The lumber produced in the section described moves in greatest volume to the markets at Ohio and Mississippi River crossings and the territory beyond, generally known as Central Freight Association territory, and to eastern trunk-line territories.

The markets at Ohio and Mississippi River crossings and in the Central Freight Association territory are, comparatively speaking, about equidistant from the various fields of production, these markets having been highly competitive as between the producing fields, and as a result of the conditions described there has grown up a relationship of rates from the producing fields to these common markets.

In this rate adjustment, to the Ohio River crossings and C. F. A. territory, the territory of production has naturally divided itself into three zones or groups. First, the territory west of the Mississippi River; second, the territory in the Mississippi Valley embrac-

146 ing the section served by the I. C., M. & O., part of the Queen & Crescent route, and the L. & N. Railroads; third, the southeastern zone, which lies to the east of the Mississippi Valley, or second group which I have just described.

Q. To what extent, if at all, have these three divisions or zones of the territory you have described the same or blanket rates to any given territory or destinations?

A. As stated in reply to the last question, these three producing fields lie about equidistant from the principal consuming markets of the country, located at the Ohio and Mississippi River crossings, and in the section known as the Central Freight Association territory. To this particular territory alone—that is, the Central Freight Association territory—there is a relationship in the rates on yellow-pine lumber from the entire producing field. I am speaking now of the three fields when I use the word "field."

But there is no blanket rate adjustment by which the same rate is applied from the three producing fields described to any destination.

To the Ohio and Mississippi River crossings and Central Freight Association territory, however, the trunk-line carriers serving the three producing fields described have established and main-

147 tained for many years a relationship of rates more or less fixed, the purpose being to permit the competition of mills in the distribution of lumber in these common markets.

These rates, however, are grouped to a greater or less extent in each of the three fields or zones mentioned. In other words, I mean, Mr. Examiner, that there is no general rate adjustment by which from all three fields the rates are the same; but in the fields themselves, the three fields I have described, there are rates more or less grouped in these different sections.

For example: From the territory west of the Mississippi River there is a zone or blanket rate covering the entire producing field located south of the Arkansas River and extending to the Gulf of Mexico, including the eastern part of the State of Texas, and in this territory which was blanketed or zoned some years ago, and prior to the commission's decision in the Chicago Lumber and Coal case, they took into consideration and made one blanket or zone, including short railroads and long railroads and trunk lines, and that will be referred to in some exhibits and some testimony I will offer a little bit later on.

In the middle field—that is, the Mississippi Valley territory served by the Illinois Central and the Mobile & Ohio, and in part by
148 the Louisville & Nashville Railroad as well as various short lines—there is, generally speaking, a group adjustment including points on the important roads located on and south of the A. & V. Railway from Vicksburg to Meridian, Mississippi, and thence over other roads to Selma and Montgomery, Alabama. North of the line described the rates vary, in some instances being the same as from the group south of the line, and in other instances less.

There are exceptions to the general basis; for example, the L. & N. Railroad does not maintain the same rates to St. Louis as does the Illinois Central, M. & O., and so forth.

From the short lines, or tap lines, except those connecting with the Mobile & Ohio and New Orleans & Northeastern, the rates are made differentials or arbitraries over the rates from points on the main or trunk line. This condition has existed for many years, and has been considered in important cases by the Interstate Commerce Commission, in which it has reviewed the entire lumber-producing section adjustment, as I will show later on.

In this particular proceeding we are interested in the Mississippi Valley section. Therefore I have prepared a statement which I will now offer as my Exhibit No. 2.

149 (The document was thereupon received in evidence, marked "Defendants' Exhibit No. 2, Witness Sheppard," and is forwarded herewith.)

The WITNESS. This statement shows all of the roads in the pine-production section of the Mississippi Valley, and the rates from important shipping points to representative destinations, as covered by Exhibit A of the complaint.

Taking Memphis, the first point on that exhibit, it will be noted that the rates from the Mississippi Valley producing section range from 12½ cents to 22 cents per hundred pounds. The rate from Knoxo, Mississippi, is 16.5 cents per hundred pounds.

The complaint makes special mention of the adjustment from the Pearl River Valley Railroad, and it will be noted that the rates from points on that road to Memphis are one-half cent per hundred pounds higher than from Knoxo.

Reference is also made in the complaint to the Mississippi Western Railroad, and from the statement it will be observed that the rate

from Mississippi Western stations to Memphis is not lower than from Knoxo. In other words, it is 16.5 cents; and in looking at that I note that the point shown on the Mississippi Western is Foulke. The proper way to spell that town is F-o-u-k-e.

150 Attention is also directed to the fact that the rates from trunk lines are not uniform. For example, the rate from Fernwood, on the Illinois Central, is 14 cents; from A. & V. and N. O. & N. E. points, 15 cents; from Mississippi Central points, 15.5 cents; from the N. O. G. N. and G. M. & N, stations the rate is 16.5 cents. This adjustment to Memphis was reviewed by the Interstate Commerce Commission in case No. 4942, 27 I. C. C. 507, and the commission approved in that case different rates from the several trunk lines, the N. O. G. N. rates being subsequently approved by the commission in its unreported opinion No. A–488.

I was under the impression, after reading the original complaint, that it included New Orleans, Louisiana. It referred to Louisiana, but the amended complaint shows that Louisiana points are not included, and consequently no consideration need be given to the inclusion in this statement of New Orleans, Louisiana.

To northern destinations, such as Cairo, Chicago, and so forth, it will be noted that the rates of the standard trunk lines are usually the same, as previously pointed out; but there are also some differences to this territory in the trunk-line rates, as will be observed from the statement.

151 Further, it will be noted that with the exception of the short lines connecting with the Mobile & Ohio and New Orleans & Northeastern, that to this territory the rates of the short lines are uniformly higher than from the trunk lines.

This exhibit clearly demonstrates that Knoxo, Mississippi, on the Fernwood & Gulf Railroad, is not treated differently, generally, than other points similarly situated; and further proves conclusively that there is no zone or blanket rate adjustment on pine lumber from the Mississippi Valley producing fields by which all points of origin, except Knoxo, Mississippi, to the same destinations take the same rates, but that the rates vary in the manner previously outlined in my testimony.

From the third or eastern group certain of the standard trunk lines have established rates from certain parts of that territory which are, generally speaking, the same as the rates from I. C. and M. & O. stations in the middle group to certain of the Ohio River crossings and to Central Freight Association territory. These rates, however, are not blanketed over the southeastern territory, but apply from certain parts of the territory only; and from many points on their own branch lines, as well as on the small connections of the standard trunk lines in the Southeast, the rates are made

152 differentials or arbitraries higher than the rates from points on the trunk lines. In other words, there is no blanketing of the territory and no fixed rates to any destination which applies from all points in this eastern group.

We frequently refer to this pine-producing section as a pine blanket, and the commission in certain of its cases has referred to it as the pine blanket, but they have called attention, as I will show a little bit later on in my testimony, to the fact that the practices east of the Mississippi River in constructing rates from the pine-producing sections were different at the time they had the matter under consideration and at the time they called it a blanket. In other words, they mentioned specifically the Mississippi Central rates at one time as being higher than the group adjustment; and they have also stated in several cases, as I will point out later on, that the practices of the roads east of the river, from the short roads, was to make the rates either a differential or on combination basis over the junction points; so in fact it is not what you would call a blanket adjustment embracing a segregated part of the territory, or State, or something like that.

Q. You have been dealing with certain characteristics of the rate adjustment on yellow pine lumber from the producing section of the United States to the various destinations. Will you now
153 state what is your purpose in offering this evidence, and what do you consider to be its relevancy to the issues in the instant complaint?

A. This complaint is limited in its scope, being confined to the Fernwood & Gulf Railroad as an originating road; but in principle it involves every similar situation in the pine-producing section of the South. It is therefore necessary to state, briefly at least, some facts concerning the adjustment from the producing fields in order to understand the situation clearly.

My purpose in introducing this testimony is to point out the misunderstanding that exists with respect to the so-called blanket rates on yellow-pine lumber, and to show also that from each of the producing fields, as described, the maintenance of a group adjustment, even from points within that producing section, was dependent upon certain conditions of rate adjustments as between the trunk lines on the one hand and the short railroads or tap lines on the other; and to bring to the attention of the commission certain features of the rate adjustment on yellow-pine lumber which have been dealt with in decisions of the commission itself which will show that the situation presented in this complaint is not a new or unusual situation, but is only one of many, all of which are of long standing and have been previously considered and approved by the commission in
154 important investigations which permitted review of the adjustments from the entire producing section.

Furthermore, to point out that the application of the same rates from points on the Fernwood & Gulf Railroad as from points on the Illinois Central or other trunk lines would be an exception rather than in line with the general basis of rates from points on short lines or tap lines in the pine producing territory east of the Mississippi River.

Q. In that connection, will you refer briefly to some of those decisions?

A. In 1903 the railroads serving the three producing fields or territories that I have described made an advance of 2 cents per hundred pounds in the rates on yellow-pine lumber from the three producing fields to Ohio and Mississippi River crossings, and to Central Freight Association territory, and so forth. This advance was complained of, and investigated by the Interstate Commerce Commission in the following cases:

Central Yellow Pine Association vs. Illinois Central, 10 I. C. C. 505.

Tift vs. Southern Railway Company, 10 I. C. C. 548.

Chicago Lumber & Coal Company vs. Tioga Southeastern Railway, 16 I. C. C. 323.

In the three decisions just named the commission dealt at
155 length with the history of the adjustment of rates from the three producing fields, with the relationship of rates from the three fields, one as compared with the other, and with the groupings of the sections served by the respective fields.

These already being matters of record with the commission, it is not my purpose to detail the history of the changes in rates or other findings of fact which are outlined in the decisions themselves.

By these decisions, however, the commission fixed for the future the relationship of rates from the territories of origin, and for the time being the commission fixed the measure of the rates from these three producing fields to the destinations named. My purpose here is merely to point out certain findings of the commission with respect to the application of the group basis from the three producing sections affected by the decisions, and, as previously stated, to point out that the maintenance of rates from points on the Fernwood & Gulf Railroad higher than from points on the Illinois Central Railroad is in line with the adjustment maintained and approved by the commission, which fixed the adjustment of rates from the various territories of origin to which I have referred.

In the Central Yellow Pine case, involving rates from the
156 middle field or the Mississippi Valley territory, the commission condemned the advance and ordered the restoration of the rates in effect prior to 1903.

In this decision the commission pointed out that in the territory west of the Mississippi River, from which an advance had been made corresponding with the advance from the Mississippi Valley, allowances were made to the so-called tap lines or short connecting railroads of amounts equal to two cents per hundred pounds and over, and that such allowances were not made by carriers east of the Mississippi River, except the Mobile & Ohio and New Orleans & Northeastern. A considerable portion of the decision dealing with the findings of fact and of the conclusions of the commission is devoted to this feature of the adjustment, showing that this point

had important bearing upon the conclusions reached by the commission.

In the Tift case the advance was also condemned, and the commission ordered the restoration of the rates in force prior to 1903. This case involved the adjustment of rates from points in eastern and southern Alabama and the State of Georgia. From this section there was no blanket adjustment. Certain of the larger lines had divided their shipping stations into different groups or rate bases, the rates from these groups differing, being higher from some than from others.

157 By reason of this grouping from many points in the southeastern territory the rates were higher than the rates from the territory west of the Mississippi River or from territory in the Mississippi Valley east of the Mississippi River. The commission's decision shows that they fully understood the adjustment in this section.

In the Chicago Lumber & Coal case, which involved the territory west of the Mississippi River, the commission approved the advance and permitted the increased rates to continue in effect, pointing out the dissimilarity of conditions with respect to the adjustment from the territory west of the river as compared with the two main groups east of the Mississippi River.

In the Chicago Lumber & Coal Company case the commission also pointed out at length as a distinguishing feature, as compared with territory east of the Mississippi River, the fact that the western producing section had been readjusted so as to form one group or blanket, and that reductions as well as advances had been made.

Furthermore, reference was made to the allowances or divisions to the so-called tap lines or logging roads connecting with these roads west of the Mississippi River.

Subsequent decisions of the commission also called attention
158 to this blanketing of the territory west of the Mississippi River, notably in the case of Ladd vs. Gould Southwestern, 36 I. C. C. 179, where the western roads, after having formed the blanket, undertook to treat the Gould Southwestern differently from other short roads in the blanket.

In the territory east of the Mississippi River affected by the decisions referred to, there was no blanketing of the territory so as to cover all of the short or connecting tap line roads, and the commission did not undertake to establish such an adjustment; but, as pointed out, one of the principal reasons why the commission did not allow the advance east of the Mississippi River was because the rates did not include allowances to short or tap lines.

In subsequent decisions, notably those dealing with the tap line investigation, I. & S. 11, 10, 23 and 31 I. C. C. reports, and those dealing with the fourth section, the commission's fourth section order 2754, which permitted the commission to review the adjustment of rates on lumber in connection with the short lines, the commission has not condemned the basis of rates operating east of the

Mississippi River, but has expressly approved the addition of arbitraries to junction-point rates in fixing rates from these short connecting railroads or tap lines, such as the Fernwood & Gulf.

159 There are numerous decisions of the commission dealing with rates on lumber and other commodities from points on short connecting railroads in the southern region in which the commission has approved rates materially higher than those applicable from the junction point with the trunk-line connections.

Q. This part of your evidence, then, shows that in the territory west of the Mississippi River it was and is the policy of the carriers to extend the trunk-line basis of rates to points on short or tap lines. In other words, that there is in effect a blanket adjustment of rates. On the other hand, the carriers east of the Mississippi River, with one or two exceptions, followed the general policy to the contrary, that is to say, they have not applied the trunk-line basis of rates, or the so-called blanket rates, to points on the short or tap lines.

Will you now tell the commission whether or not this subject has been investigated by the commission, and if so, refer briefly to the decision.

A. This situation was before the commission in one of the early tap-line investigations which it made, namely, the Central Yellow Pine Association vs. V. S. & P. Railroad, reported in 10

160 I. C. C. 194. This case was decided about the same time as the three cases involving the rate adjustment on lumber to which I referred in answer to your previous question.

The Central Yellow Pine Association was an association of yellow-pine lumber manufacturers in Mississippi and Alabama. The complaint was directed against the railroads west of the Mississippi River and alleged that while in the territory of the complainant association nothing was allowed by trunk-line carriers to short connecting or tap lines which served mills in the territory east of the Mississippi River, such an allowance was made in the territory west of the river, and that that allowance gave an undue advantage to the mills located in the territory west of the Mississippi River for reasons which were detailed in the complaint and testimony at considerable length.

The commission declined to condemn the practices of the roads west of the Mississippi River, and said, among other things, that as the defendant carriers did not control the rates which competing mills paid, that it could not be said that they discriminated against them.

The date of the decision just referred to was March 19, 1904. The Central Yellow Pine Lumber case was decided February 7,

161 1905. Tift vs. Southern Railway was decided February 7, 1905. The former case involved the question of discriminations growing out of the extension of the trunk-line rates to short or tap lines west of the Mississippi River, while with one exception the roads east of the river had declined to establish similar adjustments. The two latter decisions referred to the propriety of cer-

tain advances in rates from points on railroads in the territory east of the Mississippi River, which were the same in amount and were advanced at the same time as rates from points on railroads located west of the Mississippi River.

The commission had before it the record in the three cases at the same time.

I have prepared an exhibit, which I will now offer as my Exhibit No. 3.

(The document was thereupon received in evidence, marked "Defendants' Exhibit No. 3, Witness Sheppard," and is forwarded herewith.)

The WITNESS. This exhibit contains the expressions of the commission with respect to this particular policy of the carriers in the three lumber-producing fields. From the reading of these decisions it is quite clear that the commission fully understood the adjustment of rates from points on the Fernwood & Gulf Railroad
162 and other similar railroads operating in the middle group, and that the commission was not prepared to order reductions in the rates from points on such roads as the Fernwood & Gulf to the trunk line or junction point basis.

It must be borne in mind that the three decisions, namely, the Central Yellow Pine case, Tift case, and the Chicago Lumber & Coal case, were controlling as to the measure of the rates and the relative adjustment interterritorially as well as locally on yellow pine lumber from the three producing fields to the Ohio and Mississippi River crossings and to Central Freight Association territory. This was the important consuming territory, and, as I have heretofore stated, was the only territory as to which there was a fixed relative adjustment or relation of rates from the entire yellow pine producing fields.

I also wish to offer at this time my Exhibit No. 4.

(The document was thereupon received in evidence, marked "Defendants' Exhibit No. 4, Witness Sheppard," and is forwarded herewith.)

The WITNESS. This exhibit contains extracts from decisions of the commission which were subsequent to the decisions I have referred to, one excerpt being from I. & S. Docket 11, decided July 29, 1914.

Q. (By Mr. HUMBURG.) And reported where?

A. And reported in 31 I. C. C. 490, wherein the commission
163 fixed the rates and divisions from certain short roads; and the other from fourth section Order No. 2754, wherein the commission after being fully advised as to the fourth section departures occurring in the operations of higher rates from points on the short line than from intermediate points—that is to say, those instances where the short line met the junction point rate and handled it through another junction—the commission granted fourth section relief.

I call particular attention at this time to the last sentence quoted from I. & S. 11, wherein the commission said that the divisions as named in their order were the net amounts that could be paid out of the trunk line rates from the junctions, and when the rates from the tap lines were made by the application of an arbitrary, such arbitrary should accrue to the tap line, indicating clearly that the commission was advised as to the general situation.

In none of these general investigations made by the commission has it indicated that the adjustments were not proper, and that the rates from the territory as a whole should be blanketed; but, on the contrary, it has specifically referred to the rates from the short roads as being higher than from the junctions.

164 Q. You have stated that the general practice of the Illinois Central Railroad and other railroads east of the Mississippi River, except the Mobile & Ohio and the New Orleans & Northeastern, was to not apply the trunk line basis of rates from points on connecting or tap lines, but that, on the contrary, such rates were to be made either on combination basis or by adding certain differentials or arbitraries to the junction point rates.

Will you now tell what effect the attitude of the Mobile & Ohio Railroad, and of the New Orleans and Northeastern Railroad has had upon the rate adjustment from the producing territory in Mississippi and eastern Louisiana; and what action, if any, the Illinois Central Railroad has been compelled to take because of this policy of those two roads, which policy you say is contrary to that of other carriers east of the Mississippi River?

A. The Mobile & Ohio Railroad and the New Orleans & Northeastern Railroad served practically the same producing sections in southern Mississippi and eastern Louisiana as did the Illinois Central. The distance between the three roads is short. The Illinois Central has therefore been compelled by the action of the two roads named to depart to an extent from its original policy of not extending the same basis or the same rates as carried from its

165 own stations, to points on the connecting or tap lines.

As to the independent railroads other than the Illinois Central, Mobile & Ohio, and New Orleans & Northeastern serving this southern Mississippi and eastern Louisiana pine producing territory, all are located in the territory between the I. C. on the west and the M. & O. on the east. Those lines were constructed northward from the Gulf to connections with the New Orleans & Northeastern and Mobile & Ohio before reaching connections with the I. C. Therefore, before the connection was made with the I. C. rates had already been established in connection with the New Orleans and Mobile & Ohio Railroads, and this determined the rates which the I. C. Railroad was compelled to meet.

For example, the Gulf & Ship Island, G. M. & N., and G. O. G. N. were connections of the Northeastern and Mobile & Ohio, and had established a rate adjustment on yellow pine lumber before connection was made with the Illinois Central Railroad. The Mississippi

Central Railroad is an east and west road, but it was constructed from Hattiesburg, and its connection with the New Orleans & Northeastern westward to the I. C. Railroad, and the adjustment of rates on yellow pine lumber, had been fixed before the connection with the Illinois Central Railroad was made.

166 The Illinois Central Railroad was therefore compelled to apply no higher rates from points on these railroads than had been established by such roads in connection with the New Orleans & Northeastern and Mobile & Ohio Railroads.

There was, however, another class of railroads connecting with the Illinois Central which did not connect with the New Orleans & Northeastern or the Mobile & Ohio. Practically all of these roads were what is known as tap lines, having been constructed by proprietary mill interests for logging purposes. As is customary with such lines, they also engaged in the general handling of freight for the public.

The Illinois Central has followed its general policy of applying combination rates from points on roads of this class. It furthermore declined to allow them any divisions or proportions on lumber shipped by the proprietary mill interests located at the junction point of the Illinois Central and the tap lines.

This policy, as I have previously pointed out, was directly contrary to that of the railroads operating west of the Mississippi River, which made such divisions or allowances to the so-called tap lines. It was,

167 however, the same as the Illinois Central Railroad understood to be the policy of all carriers located in the yellow pine producing territory of the Mississippi River.

The Illinois Central was not advised that the Mobile & Ohio and New Orleans & Northeastern had departed from this general policy of the southern carriers until the information was disclosed in the investigations of the commission in the Central Yellow Pine and Tift cases. Having learned from these investigations that such divisions or allowances were being made to the short or tap lines connecting with the M. & O. and New Orleans & Northeastern Railroad, and those lines being unwilling to discontinue such allowances, the Illinois Central Railroad felt compelled to remove at least in part the disadvantages of its mills and tap lines which were located in the same general territory as those mills on the lines of the New Orleans & Northeastern and Mobile & Ohio.

It accordingly, in 1906——

Q. By "it" you mean the Illinois Central?

A. Yes, "it," meaning the Illinois Central, accordingly in 1906, accorded all tap line roads which connected with it, of which the Fernwood & Gulf was one, a basis of rates and divisions by which through rates were established from points on the tap lines to certain destinations, thus affording a basis of rates and divisions.

168 The Illinois Central did not, however, shrink its rates to the extent of the maximum shrinkages made by either the M. & O. or New Orleans & Northeastern roads, nor did it require that

the same rates be published from points on the tap lines as applied from the junction point or other I. C. Railroad stations, but it allowed the originating roads to voluntarily fix rates from their stations.

The tap lines or short lines fixed the measure of the rates or differentials to be added to make the rates from their stations, and they also fixed such grouping as they were to observe on their own railroad.

The arbitrary or differentials accrued entirely to the tap line from the time it was first put on, and was in addition to the shrinkage the Illinois Central Railroad agreed to make in its rates from the junction point.

This concession by the Illinois Central was made nothwithstanding the fact that the commission in cases heretofore mentioned had not condemned the combination basis then maintained from points on these tap lines, including the Fernwood & Gulf.

The shrinkage in the junction point rates was not made to all destinations, but was confined to destinations competitive with the Mobile & Ohio and New Orleans & Northeastern Railroads;
169 and was further limited by the measure of the revenue which the Illinois Central itself received out of the traffic, and which in many instances was too low to permit of shrinkage.

Thus the rates were originally established to Ohio and Mississippi River crossings and the territory basing thereon, including the Central Freight Association territory, and later the eastern trunk-line territory was included. To other territories, for example, points in Louisiana, Alabama, Tennessee, and Georgia, except in a few instances such as Memphis and New Orleans, there were no shrinkages, however, for the reason that such territories were not competitive with the two roads mentioned, or that the Illinois Central's revenues were too low to permit of shrinkage to meet the competition.

In other words, Mr. Examiner, when it got to this southern territory, such as points like Chattanooga, Tennessee; Atlanta, Georgia; Birmingham, Alabama; and points like that, they were located in the pine-producing territory themselves, and the competition was not between the Mobile & Ohio and the Illinois Central, but was with the territories in the Southeast, and frequently we could not meet the rates from those short roads.

Q. In thus meeting the practice of the Mobile & Ohio and the New Orleans & Northeastern railroads, by the establishment
170 of these joint through rates and divisions with its short connections or tap lines, so called, will you state whether or not the position of the Illinois Central was consistent as between the various short lines and tap lines with which it connected in that practice?

A. When the Illinois Central Railroad decided to extend the basis of rates as outlined to its short-line connections, all were treated the same; that is to say, all its tap-line connections were advised of

its purpose, of the amount of shrinkages in the junction-point rate which it was prepared to make, and of the destinations to which such shrinkages would apply. Rates and divisions were thus negotiated and established by all of these tap lines which felt disposed to incorporate as common carriers and to establish the basis of rates determined upon.

The position of the Illinois Central Railroad has been consistently maintained, as will be seen from an examination of a statement which I now offer in evidence as my Exhibit No. 5.

(The document was thereupon received in evidence, marked "Defendants' Exhibit No. 5, Witness Sheppard," and is forwarded herewith.)

The WITNESS. This statement contains a list of all of the incorporated short or tap lines with which the Illinois Central and
171 Yazoo & Mississippi Valley connect in the pine-producing territory, except the Batesville & Southwestern and Sardis & Delta Railroads, which railroads are located in the hardwood-producing section.

The exhibit is in two pages, the first page showing the basis for rates to Ohio River crossings and territory beyond, and the second a blue print showing the location of the various railroads.

As heretofore stated, the arbitrary or differential added to the junction-point rate to establish through rates from points on these short or tap lines was fixed by such lines and accrues to such lines in addition to the shrinkages in the junction-point rates made by the Illinois Central Railroad, which latter company and its connections receive no part of the arbitrary or differential.

It will therefore be seen that the situation here is entirely different from the case of Ladd vs. Gould Southwestern. First, there was no blanket; and second, one short road was not treated different from another, but in all cases the short roads were treated alike.

Furthermore, it will be noted that the Illinois Central Railroad did not fix the measure of the rates from the short roads, thereby compelling them to carry higher rates from their stations, but permitted the short roads to fix the measure of their rates.
172 Therefore it can not be properly charged that the Illinois Central has discriminated, as it did not control nor was it benefitted by the measure of the rates established. Certainly the short roads can not be properly charged with discrimination because they merely fixed the measure of their rates and compensation, and did not participate in the handling of traffic except from their own stations.

The measure of differentials, it will be observed, vary as do the local rates on the various lines, and were fixed by the traffic officials of the short roads to meet the conditions peculiar to each road.

Q. Having explained the conditions which prompted the Illinois Central to depart from the combination basis and establish joint through rates with these short or tap lines with which it connected, and that such change of policy on the part of the Illinois Central

Railroad was made because of disclosures in the Central Yellow Pine investigation of the action of its competitors, the Mobile & Ohio Railroad and the New Orleans & Northeastern Railroad, and that such action by the Illinois Central was taken in 1906, will you tell what further developments of this situation have occurred since 1906, and what action, if any, was taken by the Illinois Central because of such developments?

173 A. All of the carriers shown on my Exhibit No. 5 were originally tap lines. That is to say, they were built by or in the interest of proprietary lumber mills and had for their original purpose the bringing of logs to the mills, and many of them are still engaged in the handling of such traffic.

The more important of these roads, including the Fernwood & Gulf Railroad, were the subject of investigation by the Interstate Commerce Commission in the Tap Line cases, reported in 23 and 31 I. C. C. Reports. In those decisions the commission fixed the maximum shrinkages in trunk-line revenues that might be made out of the junction-point rate on lumber originating on these tap lines.

Following the commission's decision, the Illinois Central Railroad revised its tariffs to conform strictly to the commission's orders; that is to say, the shrinkages in its junction-point rates were made not to exceed the amounts fixed by the commission as the maximum which could be absorbed out of the junction-point rate.

In the decision referred to in the Tap Line case and in the excerpts which I offered as my Exhibit No. 4 the commission called attention to the fact that the rates from certain of these tap lines exceeded the rates from the I. C. Railroad junctions, and that such arbi-

174 trary or differential over the junction-point rate should accrue to the short line in addition to the shrinkage which the commission had approved. The arbitrary added to the rates in all instances accrues to the originating road in addition to the shrinkage made by the Illinois Central Railroad, which is strictly in accordance with the commission's decision, and I call particular attention here to the fact that the commission very carefully in the Tap Line case did not fix the amount of divisions to be accorded to the tap line, but fixed the maximum amount which the trunk lines could shrink.

Q. Your Exhibit No. 5 shows that the rates on pine lumber from short-line connections of the Illinois Central are made differentials over the trunk-line rates. Will you tell whether or not there are any mills located on those lines and whether or not there is actual movement of forest products on the basis shown, meaning the junction-point rates plus the arbitraries mentioned?

A. Traffic is handled from practically all of the short-line connections in considerable volume. There are instances where lumber mills are not located on the short lines, but from such roads crossties, piling, and other articles which take the lumber rates are handled on the basis of rates made differentials over the junction-point rate.

175 Frequently small or country mills cut considerable tonnage and then discontinue operation. I have made an investigation recently for the purpose of determining whether there was actual movement of traffic, which developed the following:

From the Kosciusko & Southeastern Railroad, which connects with our road at Kosciusko, Mississippi, on the Aberdeen branch, there is a movement of about seventy carloads of lumber per month, sixty carloads consisting of pine. The largest sawmill is located at Zama, Mississippi, handling pine lumber exclusively, and it has a capacity of 90,000 feet per day. This road's arbitrary over the main-line junction is 2½ cents per hundred pounds.

However, Mr. Examiner, from that Aberdeen district of ours, our rates on pine lumber are one cent less than from the pine-producing territory, so as an actual result the Kosciusko & Southeastern is 1½ cents over the blanket rate.

The Liberty White Railroad has three mills, two of which are located at Liberty, Mississippi, and one at Felder, Mississippi, capacity about 25,000 feet per day each. Two of these mills have been shipping about ten cars per month. The third is a new mill and will be shipping soon. There is also a considerable quantity
176 of crossties moved off this road, which are handled on the lumber rates but are not manufactured by the sawmills mentioned.

Right here, Mr. Examiner, I want to call attention to the fact that the Liberty White Railroad, as shown on the blue print attached to Exhibit No. 5, extends only to the west of the Illinois Central Railroad. It formerly had a line extending east, from McComb to Tylertown, Mississippi, which it had taken up on account of the timber being cut off in this section of the country, and which is frequently the case with these short roads.

On the Kentwood & Eastern Railroad there is a large sawmill located at Madisonville, Louisiana, having a capacity of 40,000 feet per day, which is shipping on an average of thirty cars of pine lumber per month. The Kentwood & Eastern Railroad formerly had a narrow-gauge railroad extending toward and connecting with the N. O. G. N. Railroad at Warnerton, Louisiana, and because of the fact that the timber has been cut out along this railroad it has been torn up, as is the general practice on these short logging roads.

From this narrow-gauge section of the Kentwood & Eastern the rates were formerly 1½ cents over the main-line junction, and in addition there was a transfer charge at Kentwood from the
177 narrow-gauge to standard-gauge cars of 50 cents per thousand feet, as will be shown by the tariffs in effect at that time.

On the N. C. & M. Railroad——

Q. What is that road?

A. Natchez, Columbia & Mobile, extending from Norfield, Mississippi, on the Illinois Central, to Tilton, Mississippi, on the New Orleans Great Northern.

On this line there are two mills, one located at Sauls, Mississippi, and the other at Bristerville, Mississippi, having a capacity of about 10,000 feet per day. These mills are shipping about eight cars of pine lumber per month.

There are no sawmills located on the New Orleans, Natalbany & Natchez Railroad, which connects with our railroad at Natalbany; nor are there any mills located on the Kentwood, Greensburg & Southwestern Railroad, which connects with our road at Kent's mill, just south of Kentwood. There were formerly mills located on these roads, but I am informed that they have cut out and been dismantled, and to a large extent the timber of the proprietary mills has been cut out. There is, however, considerable movement of crossties from points on these roads, which is handled on the lumber rate; the movement from the K. C. & S. W. amounting to about ten cars per month, and from the N. O. G. N. stations
178 about eight cars per month.

On the Garyville Northern there is a pine mill located at Frost, Louisiana, but I am not advised as to what the movement from this mill amounts to.

The foregoing covers all of the roads in the pine-producing territory. There is also the Batesville Southwestern, which is in the hardwood-producing territory, from which the rates are constructed on a basis similar to that operated in the pine-producing territory; and on this road there are four mills located, shipping about 60 cars per month of forest products, consisting of lumber, staves and headings, and other articles taking the lumber rate.

Mr. PALMER. I didn't catch on what road that was.

The WITNESS. Batesville Southwestern. I made the point that that was in the hardwood territory, but that we observed the same basis of constructing rates there.

What I have said clearly demonstrates that the bases mentioned are not paper bases but are actually working bases on which considerable tonnage is handled.

While I have Exhibit No. 5 before me I would like to call attention to the blue print, which shows that the only two short-line connections of the N. O. G. N. Railroad are the N. C. & M. and the Fernwood & Gulf Railroad, both of which railroads also
179 connect with the Illinois Central Railroad, and the adjustment of rates from these short roads was fixed by the Illinois Central before the N. O. C. N. reached the junction point.

Q. (By Mr. HUMBURG.) Briefly stated, what is the history of the rates on yellow-pine number from the Fernwood & Gulf Railroad stations to points reached by the Illinois Central?

A. Prior to May 21, 1906, no through rates were published on yellow-pine lumber from points on the Fernwood & Gulf Railroad. On such traffic as moved, combination of locals applied.

Following advice to our short-line connections, including the Fernwood & Gulf Railroad with respect to shrinkages, we were prepared to make in rates from our junction points to certain destinations,

namely, Ohio River crossings and related points and points beyond, the Fernwood & Gulf Railroad published, to take effect on the date mentioned, in their I. C. C. No. 1–1, rates on basis of 2 cents per hundred pounds higher than from Fernwood. Later this basis was incorporated in the tariffs issued by the Illinois Central Railroad, and in tariffs issued by certain agents for the account of the originating road.

Rates were subsequently established to eastern trunk-line
180 territory on the same basis, 2 cents per hundred pounds over Fernwood.

To Memphis and New Orleans through rates were also established, which were 2 cents per hundred pounds higher than from Fernwood; and in the latter instances rates resulted which were the same as from Tylertown, Mississippi, and points on the N. O. G. N. Railroad in that vicinity. However, in making the rates they were 2 cents over the Illinois Central junctions.

The rates originally published to Ohio River crossings were subsequently extended to apply to intermediate points on the Illinois Central in Kentucky and Tennessee, usually taking the Ohio River basis, because the Interstate Commerce Commission in fo'rth section order 2754, I think it was, although I am not sure as to the order number, denied fourth section relief at the Ohio River crossings.

Subsequent to the establishment of rates to Ohio River crossings and eastern trunk-line points on the basis outlined, the N. O. G. N. Railroad was extended to Tylertown. Because of the N. O. G. N. adjustment the Fernwood & Gulf Railroad found it necessary, in order to meet the competition of the N. O. G. N at Tylertown, to reduce the rates via its road to the same as had been established by the New Orleans Great Northern Railroad from Tylertown to the
181 consuming territory. Therefore these rates were reduced 2 cents per hundred pounds. In other words, the two-cent differential over Fernwood was eliminated, and the reduction was made out of the Fernwood & Gulf earnings. That is to say, the Fernwood & Gulf found it necessary because of this competition to reduce its earnings on Tylertown traffic.

Between points in Mississippi the Mississippi Railroad Commission has fixed a general basis for two-line rates which is combination using the local of each road, less a percentage reduction in each road's local rates, which is accomplished in Mississippi by publishing what they call double B rates.

This basis is applied almost universally throughout the State of Mississippi, and, as previously stated, was fixed and approved by the Mississippi Railroad Commission. I understand there is no attack in this proceeding on the rates to Mississippi destinations, but I call particular attention here to the basis which has been fixed by the Mississippi Railroad Commission in that State, where they are in close touch with the situation in the territory we are discussing.

To other destinations, that is, points in Tennessee other than Memphis, and points on the I. C. Railroad in Alabama and other States not embraced in the so-called shrinkage territory, the
182 original basis has continued, i. e., combination. The movement to the last-named destinations from the trunk-line points as well as from the short-line points is insignificant, because these consuming points, as we previously pointed out, are located in another pine-producing territory or adjacent thereto.

The rates from points on the Fernwood & Gulf Railroad have continued on the original basis, such changes as were made being only those caused by General Order No. 28 of the Director General of Railroads, known commonly as the 25-per-cent advance. The order prescribed a maximum increase of 5 cents per one hundred pounds, and in instances where the rates were 20 cents or more the maximum was applied, and the 25 per cent did not affect the arbitrary. That accounts for the fact of there being in some instances a two-cent differential and in other instances a 2½-cent differential.

As previously pointed out the arbitrary added to the rate accrues to the originating road, and the Illinois Central Railroad receives no portion of it.

Q. Have you made any analysis of the movement of lumber from the complainant's mill at Knoxo to various destinations for a given period, and if so, will you tell what it shows, in order that the commission may have an idea of the trend and volume of the traffic involved?

183 A. I have prepared such a statement which I will offer in evidence as my Exhibit No. 6.

(The document was thereupon received in evidence, marked "Defendants' Exhibit No. 6, Witness Sheppard," and is forwarded herewith.)

The WITNESS. This statement shows the total movement of lumber from the Swift Lumber Company, Knoxo, via Fernwood & Gulf, in connection with the Illinois Central and the N. O. G. N. for a period from January 1st to August 31st, 1919.

It will be observed there are 273 cars which were handled during the period mentioned from all destinations, and on the basis I have outlined as to the rates. It will be noted that practically all of the movement is to points to which the differential basis applies, or to which the Mississippi Railroad Commission has fixed a basis, there being only a few cars to other destinations.

This movement is typical of the movement from the territory generally, including points on the trunk lines, for the reasons I have previously explained.

Q. (By Mr. HUMBURG.) You have given the history of the rates from points on the Fernwood & Gulf Railroad. You have also filed an exhibit showing the adjustment maintained at the present
184 time from all of the other short lines with which the Illinois Central connects in the yellow pine territory it serves. Is the history of the rates from these other lines shown in your Exhibit

No. 5 the same as that of the rates from points on the Fernwood & Gulf, differing only as to dates upon which the rates were established, the latter depending upon the date of incorporation or construction of the short lines?

A. The history of the rates operated in connection with these short roads is exactly the same as what I have just detailed with respect to the history of the Fernwood & Gulf Railroad. Some of the roads were not incorporated on the same date as the Fernwood & Gulf, while others were not constructed until some time after the rates were established in connection with the Fernwood & Gulf, and therefore the dates upon which the rates were made effective are not the same.

However, the position of the I. C. Railroad has been consistent, in that it has accorded to each of its short or tap line connections in the yellow pine territory the same treatment in the matter of establishing rates and divisions. Its position is also consistent with its policy, established many years ago, of not applying from these mills the same rates as from its own stations, except where compelled by competition to do so.

185 Q. If the commission should now hold that the rates from points on the Fernwood & Gulf must be the same as from Fernwood or from Tylertown, the junction points with the Illinois Central and the New Orleans Great Northern, respectively, what would be the effect upon the other roads' rates shown in Exhibit No. 5, or what would be the effect upon the rates from points on the other roads shown in Exhibit No. 5?

A. If the rates from the Fernwood & Gulf Railroad are reduced to the basis applicable from the trunk-line junctions, I do not see how it would be practicable to defend a higher basis from points on the other roads shown on my exhibits. In all instances, as I have heretofore explained, the arbitrary or differential accrues to the originating road and is in addition to the shrinkage made by the trunk line in its junction-point rate. There seems to be no justification for such reductions in the revenues of these lines. Many of the roads shown on this exhibit are tap lines, and the amount of shrinkage in the trunk-line rates is limited by the commission in its tap-line decision, so that the trunk lines themselves would be unable to come to the assistance of these short lines by increased divisions even if the trunk line were so disposed.

186 Furthermore, as I will show by another exhibit, the general basis of rates on lumber from these short lines in the South is either combinations or differentials over the trunk-line junction points, and the application of the junction-point basis from points on the short lines is exceptional rather than in line with the usual practice.

Q. Will you state whether or not the practice of applying on lumber such differentials over the junction-point rate is peculiar to the Illinois Central and its connections or is this basis observed quite generally in the lumber producing section?

A. The practice of making rates on lumber from the short lines on the basis of differentials over the trunk-line junction is not peculiar to the connections of the Illinois Central Railroad, but is observed quite generally in the lumber-producing section.

I have prepared a statement, which I now offer as my Exhibit No. 7, in that connection.

(The document was thereupon received in evidence, marked "Defendant's Exhibit No. 7, Witness Sheppard," and is forwarded herewith.)

The WITNESS. This exhibit shows a number of instances east of the Mississippi River, as well as west of the Mississippi River, where rates are made on differentials over the junction-point rates.

187 I have made an investigation as to the movement from those roads and find that considerable traffic is handled on basis of the rates as established by the use of the differentials shown in the statement.

Q. (By Mr. HUMBURG.) Your Exhibit No. 7 shows the basis for rates on lumber for roads west of the river as well as for roads east of the river. What can you say as to the basis and the attitude of carriers in this southern region, except the Mobile & Ohio and the New Orleans & Northeastern, with respect to bases and adjustment of rates with short line connections, including tap lines?

A. I have prepared another statement which I will offer as my Exhibit No. 8.

(The document was thereupon received in evidence, marked "Defendants' Exhibit No. 8, Witness Sheppard," and is forwarded herewith.)

The WITNESS. This statement shows the basis for rates to Ohio River crossings and Central Freight Association points from practically every short railroad in the State of Louisiana east of the Mississippi River, Mississippi, Alabama, Florida, and other States embraced in the southern region. These are all lines of less than one hundred miles in length.

It will be observed from the statement, and particularly the

188 recapitulation on the last page, that there are 95 of these short roads, of which the rates from 55 are made differentials over the junction point; 27 are on combination basis; and only 13 in the entire region are on the junction point basis.

Q. (By Mr. HUMBURG.) Do I understand you correctly in saying that this embraces the entire southeastern territory south of the Ohio and east of the Mississippi?

A. That is correct; it was made up for the purpose of embracing all of the short roads in the southern region.

I would like to call you attention to a few of the instances shown on the exhibits. For example, in the State of Louisiana, which is in the territory served by our road, there are five short railroads, all of which are made differentials over the junction points.

In Mississippi, which is shown immediately following Louisiana, there are twelve roads, one being on combination, five on differential basis, and six on junction point basis. It will be noted that five of those having junction point basis in Mississippi connect with the M. & O., or New Orleans & Northeastern, whose policies have always been different from those of the roads in the territory generally, and whose policies are not controlled by the Illinois Central, the N. O. G. N., or the Fernwood & Gulf Railroad.

189 The Mississippi Western Railroad, the other road in Mississippi having the junction point basis, connects with the Gulf, Mobile & Northern. This road is owned or controlled by the same interests as the Fouke Lumber Company, whose mill is located at Fouke, Mississippi, the terminus of the Mississippi Western Railroad. I understand that this road accepts for its services proportions resulting from the tap line shrinkage as provided in the commission's I. & S. 11 decision, and no doubt this is accounted for by the relationship in interest between the lumber company and the railroad.

The Jackson & Eastern Railroad was formerly operated as part of the Meridian & Memphis Railroad, which connected with the Mobile & Ohio at Meridian, and its basis of rates was established at the time the connection was made with the Mobile & Ohio; or, I should say, at the time the Meridian & Memphis rates were established.

In the State of Alabama, which is next to Mississippi, and which is shown on the first page of the exhibit, it will be noted that there are thirteen of these short roads, of which two are on combination; ten on differential basis; and one only on the junction-point basis.

The road having the junction-point basis is a connection of the Mobile & Ohio Railroad.

190 In Georgia there are twenty-three short roads, three of which are on combination; nineteen on differential basis; and one on the junction-point basis. The one road on the junction-point basis is the Sandersville Railway, which serves Sandersville, Georgia, having rails from that point to Tennille, Georgia, about five miles distant. The only point it serves is Sandersville and Tennille, and necessarily it must make the same rates from those junctions as are made by the trunk lines. Otherwise they would receive no traffic whatever.

It is unnecessary, I think, to point out the number of roads in each State, but the exhibit is very clear, and it will be seen clearly that the application of the junction-point basis from the short road is exceptional rather than the rule; and as I have previously pointed out, we have made an investigation as to quite a few of the roads, and especially all of those shown on Exhibit 7, and find that there is considerable tonnage handled on the differential basis.

Q. Is lumber treated differently from other traffic with respect to the plussing of the junction-point rates from and to the points on the

short lines in Mississippi and elsewhere in the southeastern territory?

A. No; the same basis is applied on other classes and commodities. That is, either differential or combination basis.

191 Q. Do you now speak of the Fernwood & Gulf, or the roads generally?

A. I am speaking of all of the roads, and with respect to the Fernwood & Gulf Railroad I wish to offer at this time a statement as my Exhibit No. 9.

(The document was thereupon received in evidence, marked "Defendant's Exhibit No. 9, Witness Sheppard," and is forwarded herewith.)

The WITNESS. This statement shows rates on classes and representative commodities to Knoxo, Mississippi, as compared with rates to Fernwood, Mississippi, the trunk-line junction.

This exhibit is illustrative of similar adjustments in connection with other short roads in the southern territory. The class and commodity adjustment was investigated by the Interstate Commerce Commission in connection with the carriers' petitions for relief from the application of the fourth section in the Southeast, and the commission did not condemn the basis but granted fourth section relief under fourth section Order No. 3866, 30 I. C. C. 153, 32 I. C. C. 61, decided April 13, 1914.

Q. What is the history of the rates from points on the Mississippi Central Railroad to the destinations here involved?

192 A. The Mississippi Central Railroad was formerly the Pearl & Leaf River Railroad, which extended from Hattiesburg, Mississippi, to the Pearl River. I have not the date of the original construction, but it was in the latter part of the 90's, somewhere between 1895 and 1900. It connected only with the lines serving Hattiesburg, which were the N. O. & N. E., G. & S. I., and G. M. & N., which was formerly the Mobile, Jackson & Kansas City Railroad.

Rates on pine lumber and articles taking the same rates were, according to our records, originally issued in connection with this road by the New Orleans & Northeastern Railroad on basis of 2 cents per hundred pounds higher than from Hattiesburg, as will be noted by reference to N. O. & N. E. Tariff 640–A, effective November 18, 1903, filed with the Interstate Commerce Commission under Mississippi Central Railroad I. C. C. No. 40.

The G. & S. I. Railroad operated at the time from Hattiesburg to Jackson, Mississippi, and on January 17, 1904, the I. C. Railroad and G. & S. I. joined the Mississippi Central in operating through Jackson the same basis of rates as had been established via the N. O. & N. E. Railroad, i. e., 2 cents per one hundred pounds over Hattiesburg, as will be noted by reference to Supplement 37 to I. C. Railroad Tariff, I. C. C. 1850.

193 The commission was advised as to the basis from the Mississippi Central Railroad in the Central Yellow Pine case, and they did not require any change in the relationship.

Effective August 10, 1904, in supplement 12 to New Orleans & Northeastern Tariff 640–A, Mississippi Central I. C. C. No. 40, the New Orleans & Northeastern Railroad reduced the rates from Mississippi Central stations to the Hattiesburg basis. Following this reduction by the New Orleans & Northeastern Railroad, the Gulf & Ship Island, and Illinois Central, operating through Jackson and Hattiesburg, Mississippi, met the rates established by the New Orleans & Northeastern Railroad, this basis having become effective via the Gulf & Ship Island and Illinois Central on August 31, 1904, as will be noted by reference to Supplement No. 63 to Illinois Central Tariff I. C. C. 1850.

On June 10, 1906, the Mississippi Central Railroad made a direct connection with the Illinois Central at Brookhaven, and the same basis was applied via Brookhaven as via Hattiesburg and the New Orleans & Northeastern Railroad, this being necessary to keep the Brookhaven route on a parity with the route in connection with the New Orleans & Northeastern. The line was subsequently ex-
194 tended to Natchez, connecting with the Missouri Pacific Railway at that point, as well as with the Y. & M. V.

The connection with the New Orleans Great Northern and Mississippi Central was not made until the New Orleans Great Northern was constructed, which was subsequent to the extension of the Mississippi Central to Brookhaven, and, to be exact, in the early part of 1909.

It will therefore be seen that the basis for rates from Mississippi Central stations was fixed before the Illinois Central or the New Orleans Great Northern had any connection with that line. In establishing rates in connection with the Mississippi Central Railroad, the Illinois Central and the New Orleans Great Northern Railroads were merely meeting the rates already available in connection with their competitors, they being in no wise responsible for the adjustment on the Mississippi Central Railroad.

Q. Was or is the Illinois Central Railroad responsible for the adjustment of rates on lumber from points on the Mississippi Central Railroad, and does the Illinois Central Railroad, the New Orleans Great Northern, or the Fernwood & Gulf Railroad, control the Mississippi Central Railroad in the making of its rates?

A. As I have heretofore stated, the Mississippi Central Railroad was constructed from a connection with the New Orleans &
195 Northeastern at Hattiesburg westward to a connection with the Illinois Central Railroad at Brookhaven, and was subsequently extended to its present western terminus at Natchez, Mississippi.

As shown by the history, the basis of making rates from Mississippi Central stations, the same as from points on the New Orleans & Northeastern, had been established and was in effect before the

Mississippi Central was constructed to its connection with the Illinois Central Railroad at Brookhaven. The Illinois Central Railroad of necessity had to meet these rates in order to participate in traffic originating on the Mississippi Central. It had no voice, however, in determining the basis applied from points on this line, as this had been established before connection between the two companies was made.

As further demonstrating that the Illinois Central, New Orleans Great Northern, and Fernwood & Gulf do not control the Mississippi Central in the making of its rates, I call attention to Mississippi Central Tariff 877–B, I. C. C. No. 368, containing rates on canned goods from Hattiesburg, Mississippi, and Brookhaven, Mississippi, to various destinations in the North and West. Neither the Illinois Central, the New Orleans Great Northern, or the Fernwood and Gulf are parties to this tariff. Therefore they do not
196 participate in the rates named therein.

Brookhaven, one of the points of origin shown in the tariff, is a junction point with the Illinois Central, and notwithstanding the fact that the Illinois Central held different views from the Mississippi Central with respect to rates from Brookhaven, the Mississippi Central Railroad published the rates and are maintaining from Brookhaven to-day lower rates than carried on canned goods by the Illinois Central.

The Mississippi Central in Tariff 6–K, I. C. C. No. 364, applying on lumber from Mississippi Central stations to New Orleans, publishes lower rates in connection with the N. O. & N. E. and N. O. G. N. than are provided from the same stations to New Orleans in connection with the Illinois Central Railroad, as shown by reference to Mississippi Central Tariff 598–B, I. C. C. 361.

The Fernwood & Gulf Railroad is not a party to either tariff.

In Agent Speiden's Tariff, I. C. C. 193, and in Illinois Central Tariff, I. C. C. 5642, rates are provided to Covington, Kentucky, and Bowling Green, Kentucky, via the N. O. & N. E. and I. C. Railroads, the rate to Covington via the N. O. & N. E. being 25½ cents and via the I. C. Railroad 28 cents per hundred pounds.
197 To Bowling Green the rate via the N. O. & N. E. is 24 cents and via the Illinois Central is 28 cents per hundred pounds.

In Southern Railway Tariff, I. C. C. No. 2855, rates are provided on pine lumber from Mississippi Central stations as follows:

To Chattanooga, Tennessee, 17½ cents.

To Knoxville, Tennessee, 21½ cents.

To Allen, North Carolina, 31 cents.

No through rates are published in connection with the Illinois Central Railroad from Mississippi Central stations. Many other illustrations of like character could be given, but I believe these are sufficient to demonstrate that the Illinois Central Railroad, the New Orleans Great Northern, and the Fernwood & Gulf do not control the Mississippi Central in its rate-making.

Attention is directed to the routing instructions as provided in connection with rates on lumber from Mississippi Central Railroad stations to Central Freight Association points, as published in Agent Speiden's Middle States Lumber Tariff 2, I. C. C. No. 159, and for the purpose of showing the routes as provided in this tariff I offer at this time a statement which is my Exhibit No. 10.

(The document was thereupon received in evidence, marked
198 "Defendant's Exhibit No. 10, Witness Sheppard," and is forwarded herewith.)

The WITNESS. From this exhibit it will be noted that there are specified in the tariff only three routes via the Illinois Central Railroad, six via the New Orleans Great Northern, and none in connection with the Fernwood & Gulf Railway, leaving thirty-two other available routes from Mississippi Central stations to Central Freight Association territory, covered by this tariff. The Mississippi Central's business to other territory is handled largely via the same routes, except that in addition to western destinations they handle considerable business via Natchez and the Missouri Pacific. It is obvious that the Illinois Central, New Orleans Great Northern, and Fernwood & Gulf Railroads have no control over the Mississippi Central Railroad in the making of its rates or the routing of its traffic.

Q. Has there been any change in the policy or the views of the Illinois Central Railroad with respect to the maintenance of rates on trunk-line basis from points on connecting or short-tap lines since these rates were originally established, or since the hearing of the Yellow Pine case in 1903, and by these rates is meant the rates here assailed?

A. As I stated before, the views of the Illinois Central are
199 the same now as they were formerly. It was compelled, however, to establish in certain instances rates contrary to its views and policy by reason of the action of its competitors, the Mobile & Ohio and New Orleans & Northeastern Railroad; but it has maintained throughout a consistent and nondiscriminatory basis. That is, we have treated all of our short roads exactly alike; we have permitted them to make their rates, and whatever accrued over the junction-point rate has accrued to the short road.

Q. Does the Illinois Central, the New Orleans Great Northern, or the Fernwood & Gulf, or either of them, connect with the Cybur, Gulf & Northwestern Railroad, and do they or either of them in any wise control the making of the rates on yellow pine lumber from points on that road?

A. Neither the Illinois Central, the New Orleans Great Northern, or the Fernwood & Gulf Railroads connect with the Cybur, Gulf & Northwestern, nor do they control that road in the making of rates from points on its line. The Cybur, Gulf & Northwestern Railroad formerly extended from Picayune, Mississippi, on the New Orleans & Northeastern Railroad, now a part of the Southern Railway System, to a point ten miles in the interior. A complete history

of the road will be found in the complaint of the Cybur Lum-
200 ber Company vs. N. O. & N. E. Railroad et al, I. C. C. Docket 8276, 43 I. C. C. No. 268.

This road, I am informed by the Southern Railway, ceased operations September 30, 1917, and a part of it was taken over by the Pearl River Valley Railroad. Therefore, any reference to the Cybur, Gulf & Northwestern Railroad does not reflect present-day conditions, but merely refers to a paper adjustment.

Q. Does the Illinois Central, New Orleans Great Northern, or the Fernwood & Gulf, or either of them, connect with the Pearl River Valley Railroad, and do they, or either of them, in any wise control the making of the rates on yellow pine lumber from points on that road, meaning the Pearl River Valley Railroad?

A. Neither the Illinois Central Railroad, New Orleans Great Northern, or Fernwood & Gulf connect with the Pearl River Valley Railroad, nor do they control that line in the making of its rates.

The Pearl River Valley extends from Nicholson, Mississippi, on the New Orleans & Northeastern, to Delton, Mississippi, a distance of 14.9 miles.

The policy of the New Orleans & Northeastern Railroad with respect to its short or tap lines has been different from other roads, as previously pointed out. However, since the New Orleans & North-
eastern has been under Government control the administration
201 has reached the conclusion that this road should be treated the same as other short roads in the southern region—that is, by making the maximum shrinkage as provided in the commission's tap-line decision—and if that road feels that it is entitled to greater revenue it should obtain same by adding to the junction-point rate such arbitrary as it considers proper.

Q. Does the Illinois Central, the New Orleans Great Northern, or the Fernwood & Gulf, or either of them, connect with the Mississippi & Western Railroad, and do they, or either of them, in any wise control the making of rates on pine lumber from points on that line?

A. Neither the Illinois Central, New Orleans Great Northern, or the Fernwood & Gulf connect with the Mississippi & Western Railroad, and they have absolutely no control over the making of rates on that line.

The Mississippi & Western, as I have previously pointed out, is controlled by the same interests as control the Fouke Lumber Company. It connects with the Gulf, Mobile & Northern Railroad at Stevens, Mississippi, and extends to Fouke, Mississippi, a distance of 13 miles. There are no mills located on this road except at Fouke, and these mills I am informed are the mills of the Fouke Lumber Company.

202 The trunk-line connection of the Mississippi & Western—that is, the Gulf, Mobile & Northern—shrink its revenue only to the extent as authorized in the so-called Tap Line cases, I. & S. 11, and its connections do not make any shrinkages whatever. Apparently the proportions on this basis are accepted by the originating

road because of the relationship between the interests controlling the railroad and the lumber mill.

Q. Do these same three lines, or any of them, connect with the Alabama & Mississippi Railroad, and do they in any wise control the making of rates on pine lumber from stations on that line?

A. They do not connect with the Alabama & Mississippi and have no control over the making of rates from points on that road.

Q. By "they" you mean the Illinois Central, New Orleans & Great Northern, and the Fernwood & Gulf?

A. Yes, sir. The Alabama & Mississippi Railroad formerly connected only with the Mobile & Ohio Railroad at Vinegar Bend, but subsequently by extensions and by acquiring certain other railroads extensions were made through Leakesville, making a connection with the Gulf, Mobile & Northern at that point, and Pascagoula, where they connect with the Louisville & Nashville Railroad. The adjustment of rates, however, was fixed at the time when the connection
203 was made with the Mobile & Ohio Railroad.

Q. Having covered the allegations of unjust discrimination, what have you to add concerning the allegations with respect to the unreasonableness per se of the rates involved? Have you prepared any exhibits in that connection?

A. I have understood from this complaint that the allegations of relationship and discriminations were the controlling allegations or factors, and that the allegation with respect to the reasonableness per se were merely incidents thereto.

The rates on lumber, pine lumber and in fact all kinds of lumber, from the Mississippi Valley territory have been investigated in so many proceedings, and recently under I. & S. 520, 34 I. C. C. 562, and I. & S. 745, 42 I. C. C., 548; and the reasonableness per se of the rates so well established as a matter of record, that I did not consider it necessary to dwell upon this point extensively.

In the proceedings referred to it has been shown that in its efforts to place its lumber mills on a competitive basis the Illinois Central Railroad has established an extremely low level of rates, many of which are lower than rates in the Central Freight Association
204 territory for similar distances, and it is generally recorgnized that the Central Freight Association territory is about the lowest adjustment in the country.

To illustrate this, our rates on pine lumber from Fernwood, Mississippi, to Cairo, Illinois, for a haul of 450 miles south of the Ohio River, are 19 cents per hundred pounds. The rate on pine lumber from Cairo to Belle Fontaine, Ohio, for a 456 mile haul, is 19½ cents per hundred pounds; and from Louisville, Kentucky, to Steubenville, Ohio, the rate is 19½ cents for a 440 mile haul.

The rates north of the river, as well as south of the river, are used in constructing through rates on which considerable traffic is hauled. Many other similar illustrations could be given, but these, as I have already stated, have been shown in the proceedings to which I have referred.

Contrasted with the adjustment of rates on pine lumber, the first class rate from Fernwood, Mississippi, to Cairo, Illinois, is $1.16½ per hundred pounds, as compared with the first class rate from Cairo to Belle Fontaine, Ohio, of 76½ cents, and from Louisville to Steubenville of 75 cents. There is no connection, of course, between the class rate adjustment and the lumber rate adjustment, but these figures are merely given for the purpose of showing that proportionately the lumber rates from our points are on an extremely low level, and one contrary to the general basis of rates in southern territory, as it is well known that the rates in that territory are, generally speaking, on a higher level than in Central Freight Association territory.

205

I have prepared several statements which will make this record complete, and which in my opinion will demonstrate that the rates attacked are not unreasonable. The comparisons are confined largely to transportation through the same territory, and there can be no question as to the circumstances and conditions incident to the transportation being such as to make the rates used fairly comparable. The comparisons could be extended greatly, but in view of this and the tests already made, I deem them sufficient to prove the reasonableness per se of the rates. I will offer these statements in evidence.

(The documents were thereupon received in evidence, marked "Defendants' Exhibits 11, 12, and 13, Witness Sheppard," respectively, and are forwarded herewith.)

The WITNESS. Exhibit No. 11 is a sketch which shows in comparison the rate from Knoxville on the Fernwood & Gulf Railroad for a haul of 937 miles with the rates from points in Georgia on short railroads for equal distances, showing that the adjustment from the Fernwood & Gulf Railroad stations is much lower than from the Georgia producing territory.

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Exhibit No. 12 is a similar exhibit and shows Cincinnati as the destination.

Exhibit No. 13 is a statement showing numerous rate comparisons from points in the southern region and in other regions for equal or substantially the same distances, and in making this exhibit I have confined it largely to points of origin in the southern region on railroads similar in character to the Fernwood & Gulf Railroad. However, there are some other railroads, that is, the longer railroads, trunk line adjustments in there, which show that the Fernwood & Gulf has a lower adjustment of rates than is operated by the trunk lines from certain sections.

On each of the statements I have shown, in addition to the actual mileages between the points mentioned, the average mileage and the average rate.

For example, the rate from Knoxo, Mississippi, to Cincinnati is 28½ cents per hundred pounds for a distance of 815 miles. I have compared that rate with other rates to Cincinnati and to other destinations for substantially the same haul; and at the bottom of each page I have averaged the distance and averaged the rate

207 by dividing the mileage and the total rates by the number of points, getting on Cincinnati a result of an average haul of 743 miles with a rate of 31.3 cents.

The other averages are made in the same manner, and there is included in this exhibit sheet 7–A, showing New Orleans, but we have since learned that New Orleans is not included, and this sheet need not be given any consideration.

Q. You have taken the short-line distances, have you, Mr. Sheppard?

A. Yes, sir.

Q. And these railroads, are they the originating roads or the routes?

A. They are the originating roads. I will state, Mr. Humburg, that on sheet 11 the abbreviations are explained so that they can be easily checked.

Q. The points that you have picked are lumber originating points?

A. Yes, sir.

Q. And there is a movement of traffic from that general territory to the destinations here involved?

A. Yes, sir.

Q. The Fernwood & Gulf Railroad is not under Federal control?

208 A. No, sir; the Fernwood & Gulf Railroad is not under Federal control. It has been released; except I believe they have what they call a modified contract which retains them to an extent, but they are not under what you call Federal control.

Mr. HUMBURG. That is all. Have you anything, Mr. Green?

Q. (By Mr. GREEN.) Just a few things that I sort of disagree with my friend about, and concerning which I would like to question him.

As I understand it, the Mississippi Central and New Orleans Great Northern are under Federal control.

A. Absolutely; yes, sir.

Q. Now, Mr. Sheppard, to begin with, what has been consistently the relationship existing between the Fernwood & Gulf Railroad and the Illinois Central Railroad, as to unity of operation and control of the Fernwood & Gulf by the Illinois Central?

A. There is absolutely no unity. The Fernwood and Gulf Railroad is an entirely independent railroad. We have absolutely no control over them as to any of their policies or operations.

Q. Please state whether or not of the roads that connect with yours they did not need Christianizing more, possibly, than any other road you had.

A. In what respect?

209 Exam. SMITH. That is a technical term we do not understand. Kindly define that.

Q. (By Mr. GREEN.) In other words, what I mean is that you had more disagreements and differences with the Fernwood & Gulf than possibly any other short line among your connections.

A. We have disagreements with all of them, but there have been no disagreements about the basis of the lumber rates to apply from the Fernwood & Gulf Railway. In other words, the Fernwood & Gulf Railway have established originally their rates two cents per hundred pounds over the trunk-line rates, and they have constantly maintained that basis.

Q. To begin with, the history of the Fernwood & Gulf rates, beginning about the year 1906, will you please tell the commission, if your information goes back that far, as to how lumber was moved from the mills on the Fernwood & Gulf to your railroad, and at what rate?

A. The rates from all of those short roads, including the Fernwood & Gulf, were handled on the basis of local rates of the originating road up to the junction, and the local rates beyond. In other words, combination on the junction point.

Q. Please state whether or not at that time there was or was not any through rate in effect.

210 A. There was not prior to the date I mentioned, in May, 1906.

Q. Will you please tell the commission what the local rate of the Fernwood & Gulf to the junction point was, if your recollection will permit?

A. I haven't any information on that. I tried to find out what their locals were, but I could not find their tariffs. We do not keep a complete record of their tariffs.

Mr. GREEN. Mr. Examiner, I reckon I might testify just a little.

Exam. SMITH. Your statement will be accepted at this time, Mr. Green.

Mr. GREEN. My information is that it was five cents. Is that correct?

The WITNESS. I would say that five cents would not be out of line with those short roads in that territory.

Exam. SMITH. Five cents would fit in with a two-cent arbitrary now just about.

Q. (By Mr. GREEN.) Now, going up to the road just immediately north of that, the history of that connection with your road, namely, the Natchez, Columbia & Mobile, was developed in the old Two Cent Rate case, the Central Yellow Pine case, and it was shown in that record, was it not, that that rate was 4 cents local in, and

211 that there was no recognition by your road of this little railroad as a carrier?

A. Yes. There was one shipper in that proceeding who had a mill located on the N. C. & M. who complained very bitterly about the combination basis applying from the N. C. & M. points, and about the Illinois Central Railroad refusing to make allowances and all that, but the commission did not condemn the combination basis. In fact, they merely instructed that the two cents advance that had been made by the Illinois Central in its rates be taken off, and therefore, notwithstanding this shipper's complaint about the adjustment on the

N. C. & M., it allowed the combination basis to continue from that road, and that was not changed until some time in 1906, when we accorded this general basis to all of our tap-line or short-line connections, and the N. C. & M. made their rates two cents over the junction rate, the same as the Fernwood & Gulf.

Q. Now, with reference to the impossibility of competing with a two-cent differential, please state to the commission whether or not it is not a fact that in a former case there was a difference in the rate on lumber hauled in a flat car over the rate on lumber hauled in a box car of sometimes as high as 7 cents, and it was subsequently reduced to 3 cents.

212 A. My recollection of that, Mr. Green, is just the opposite; that is, that the flat-car rate was lower than the box-car rate.

Q. All right.

A. That is my recollection. I don't know exactly what the differences were, but there was not a wide difference between the box and the flat cars.

Q. Now, will you please explain also what was further developed in the original hearing with reference to the Mobile & Ohio, as to why its policy with reference to its lumber development was possibly not the same as with reference to your road?

A. Mr. Taylor, I believe it was, who testified for the Mobile & Ohio, stated that his road was a very old road, having been constructed before the Civil War, and that the timber along its line had been largely cut out, and for that reason it was compelled to carry a lower rate adjustment on the Mobile & Ohio, or at least it did carry from these Mobile & Ohio stations lower rates than other roads in that territory.

For example, their rate was much lower than the rate on the Illinois Central. There was a constant fight between the carriers in those days for the traffic. The Illinois Central Railroad was trying to get its line on a basis as low as the lines east, like the

213 Mobile & Ohio and the lines west in upper Arkansas and Missouri, and the thing finally developed by our making our rates the same as from the Missouri territory, which these other roads down in that territory met, and that put the roads for a time on the same basis as to the trunk lines.

The Mobile & Ohio felt, as explained by Mr. Taylor——

Q. Wasn't that Mr. Russell?

A. I was under the impression that it was Mr. Taylor. Maybe it was Mr. Russell. Anyhow it was an official of the Mobile & Ohio, and they explained that as their reason for making the lower rates on their road, and no doubt they have been controlled by that feature in making rates from points on their short-line connections. However, I cannot say as to that. We were not informed as to the Mobile & Ohio's change in policy until this investigation came along.

Q. Will you please tell the commission, if you can do so, how the value of lumber at the time of these differentials about which I have

been speaking compared with the value of lumber at the present time?

A. I have no figures as to actual values; but from general knowledge I would say that the rates on pine lumber from 1906 to the present day have increased by four or five times.

214 Exam. SMITH. What do you mean, four or five successive increases?

The WITNESS. No; I mean that the price of lumber to-day is about four or five times what it was in 1906.

Exam. SMITH. The price of the lumber itself?

The WITNESS. Yes.

Exam. SMITH. Not the rates on lumber.

The WITNESS. No, sir.

Q. (By Mr. GREEN.) That is just the point to which I was directing your attention, if you please; the price of lumber has advanced materially and the rates on lumber have not advanced, have they, in proportion to the price?

A. No, sir; we have made practically no increases in the rates on lumber from this producing territory since they were fixed by the commission in the Yellow Pine cases, except that to north bank Ohio River crossings, along about 1915, in order to satisfy a ruling in a complaint made by the Ohio River cities, we made a difference between the north and south bank Ohio River crossing rates of one cent per hundred pounds to cover the bridge arbitrary. That caused an increase of one cent per hundred pounds to the north bank Ohio River crossings. That has been the only increase made in the rates since they were fixed in the Yellow Pine case, except

215 the general increase fixed by General Order 28, which was a 25 per cent advance, with a minimum of 5 cents.

Q. (By Mr. GREEN.) Let us take, for example, a territory beginning at Vicksburg, on the Mississippi River, projected east to Jackson and south along the Pearl River to the Gulf; then projected to the mouth of the Mississippi and thence up the Mississippi to the point of beginning. I will ask you with reference to the territory thus defined, what is your information as to how much of the timber has been removed up to the present time from that territory, and how long there will be a lumber tonnage moving out of that district?

A. I have no actual figures to show what the standing timber is in the territory you have described, but I do know this, that as to the Illinois Central and Yazoo & Mississippi Valley points, the tonnage along our road, or the standing timber, has been largely cut out, and that the larger operations in that territory now are confined to the mills who have these short or tap line connections such as the mill at Norfield, the mill at Natalbany, the mill at Kentwood and Fernwood, and points like that. They obtain their supplies of standing timber, not from points on the Illinois Central Railroad, but from those short line connections.

Q. I will ask you whether or not an estimate of a period
216 of five years for the substantial exhaustion of yellow pine timber in that territory appears unreasonable from the information which you have?

A. We made some investigations several years ago as to these mills—I think it was about five years ago—and the longest life of any of those mills along our road was about eight to ten years, so they have got now about anywhere from three to five years life, according to the investigations made at that time.

Q. Now, will you tell the commission whether or not, up to this time, there has not been a uniform practice, so far as our railroad is concerned—that is, the Fernwood & Gulf Railroad—of plussing from all of its local stations, except where compelled by competition to do otherwise, the rate named at the junction point?

A. The Fernwood & Gulf have consistently followed the practice of making their local station rates differentials over the trunk line junction. The only exception that I know of that they make to that, and that is not at their local station but is at their junction point, is where, for example, they have undertaken to meet at Tylertown via Fernwood and the Illinois Central the rate of the N. O. G. N., and they have undertaken to meet at Fernwood the rate of the Illinois Central Railroad operating out through Tylertown
217 and the N. O. G. N. That situation was considered by the Interstate Commerce Commission in connection with fourth section order No. 2754, and the commission granted the Fernwood & Gulf along with a number of other short line carriers, and their trunk line connections, fourth section relief to met the situations of that kind.

Q. I will ask you whether or not that practice has not been consistent also with the N. C. & M., the Liberty White, the K. G. & S. W., the K. & E., the L. L. & N. E., the N. O. N. & N., and the Garyville Northern, shown in your Exhibit No. 5?

A. That is true. All those roads have consistently plussed the junction-point rate and have taken up the plussage.

Q. For their own benefit?

A. For their own benefit; yes, sir.

Q. Now, will you please tell the commission how long this practice has been in existence and what percentage of the timber has moved out from this territory under this practice which you have detailed?

A. As to when the practice began, that commenced, as I pointed out in my testimony, along about 1906, the same time that we established the rates for the Fernwood & Gulf.

218 However, this does not mean that the rates on the differential basis moved all of the traffic from these short roads, because prior to that time the roads located on the short roads paid the combination rate. In other words, they paid more than the differential.

The Liberty White Railroad, which was built by the J. J. White interests, has cut out considerable of its tonnage, and all of the independents located along its railroad and the J. J. White people have discontinued operation at McComb and have taken up the railroad east of McComb.

Q. Wait a minute; you are going too fast for us there. When you say that the J. J. White people have taken up their road, are you not misstating the facts in this, that their creditors took it up for them?

A. Yes; they were in the hands of a receiver, and I understand they had considerable trouble about it; but, anyhow, the track has been taken up and there is no lumber tonnage out there. The entire tonnage from that section has been moved either on combination or a differential basis.

On the Kentwood, Greensburg & Southwestern and the New Orleans, Natalbany & Natchez Railroad that tonnage has been practically cut out and moved out on a combination or on a differential basis.

219 The N. C. & M. road, to a large extent, has been cut out. However, they are still getting some tonnage from this line.

The Liberty White Railroad extends west of our road and has some lumber tonnage, but the bulk of the standing timber along that road has been cut out and moved either on the differential or combination basis.

On the Kentwood & Eastern Railroad, on a certain part of it, all of the tonnage has moved on either a differential or combination basis, and part of that track has been removed; and as I pointed out in my testimony they have used the old rail that they took up in making a longer connection, and absorbed another railroad. Just what their prospects are I do not know.

The L. N. & N. E. Railroad is a road that has been built in recent years and I do not know how much tonnage they have left.

The same is true of the Garyville Northern Railroad. They have only been in operation the last five or six years, and I understand they have tonnage on their road, and that they have considerable yellow pine that has not been moved. The first yellow-pine mill was located on their road a short time ago.

Q. Taking the whole situation, would you say it was at all unreasonable to say that there had been moved under the practice
220 here attacked, from these lines, say, 75 per cent or more of the standing timber?

A. I don't think that would be a high estimate, or too high an estimate. In fact, I think the first mistake made by the roads down there was taking anything less than their local rates up to the junction. I think that is where they made their mistake.

Q. With regard to one of your exhibits, I noticed shipments to Nashville. Those are still moving on a combination of locals, are they not? There is no through rate, as I understand it.

A. No through rate to Nashville; no, sir.

Q. No through rate to Union City?
A. No through rate to Union City.
Q. Nor Chattanooga?
A. No, sir.
Q. With reference to the financial condition of some of these roads down there, what do you know about the Liberty White?
A. The Liberty White has been in financial straits for quite a few years, and its interests are still in the hands of a receiver. Just exactly what their financial standing is at this time I don't know, but I have been informed that they would be very glad to take up the balance of the road and retire from handling traffic altogether,
221 but for some reason they are compelled to maintain that particular section west of our railroad, although it is not a paying proposition.
Q. With reference to the Kentwood & Eastern, do you know anything about their troubles in taking up their road?
A. The Kentwood & Eastern Railroad took up a part of their narrow-gauge line extending over to Hackley, Louisiana, because they were not making any money in the operation of the line; there was no further traffic out there to be handled to amount to anything; and I have been informed they thought they were within their rights to move or remove this section of the road. However, the Louisiana Railroad Commission took a different view of it, and I understand the matter now is before the Supreme Court for decision as to whether the Kentwood & Eastern Railroad will be compelled to operate this railroad on which there is no traffic to pay for the operation.
Q. You have got, then, a line that is immediately south of the Fernwood & Gulf and a line that is north of the Fernwood & Gulf with the timber gone. Now, will you please tell the commission as a traffic man what is going to happen to the Fernwood & Gulf after its timber is gone?
A. I don't see any reason why the experience of the Fern-
222 wood & Gulf should be any different from the balance of these roads. I think within five years' time, or thereabouts, and certainly within ten years' time, the Fernwood & Gulf Railroad will have got out all of the timber and moved all of the timber along its railroad, and it will have to depend exclusively on such other traffic as will originate in that territory. The experience has been this, that there is not sufficient traffic in the territory after the timber is cut off to support a railroad. That has been thoroughly demonstrated in the case of the Liberty White and the Kentwood & Eastern.
Q. How about the Finkbine Lumber Company road that was connected with the Gulf & Ship Island road?
A. I am not familiar with that one, Mr. Green, but I will say that the experience of all of them is that when the timber is gone the road is gone.

Q. I will ask you, please, sir, to assume this situation: A road of the kind and character of the Fernwood & Gulf, serving a territory wherein there is predominantly only one class of tonnage to be moved, which is being constantly exhausted by being cut and converted into lumber; will you please state whether or not from a traffic point of view there should not be integrated into that rate some form of charge for taking care of a capital return at the end of the operation?

223 A. I would say so; yes, sir; not only to make a capital return but to pay satisfactory interest on the investment during the period of operation.

Q. In your experience as a traffic man have you come into contact with a situation of that kind?

A. No; I have not.

Q. So far as you know, that is a novel kind of a proposition, is it, from a railroad standpoint?

A. A traffic man with a railroad like the Illinois Central would hardly consider that in making the rate adjustments on our own railroad. However, it would seem to me quite vital that a traffic official of a short road should give consideration to a feature of that kind.

Q. You are a rate expert man, are you not?

A. Well, I know something about them.

Q. You are understood to be. Now, from your experience and knowledge, Mr. Sheppard, tell me how that situation ought to be handled, assuming my factors to be correct.

A. Well, it is pretty difficult in adjusting a freight rate to put just that kind of a feature into consideration, as to just what measure or amount you should include in the freight rate for that purpose. The only way I could see that I could get at a satisfactory decision for myself would be to compare my earnings on the traffic with the earnings of other similar roads.

224 That is to say, if other similar roads were applying a combination or differential basis, and my combination or differential basis was in line with theirs, I believe I could then fairly say that the figures represented by all of these short roads would include something of that character; but just how to include it specifically I would not like to say, because I have had no experience along that line.

Q. I will ask you from an accounting point of view whether the proper method of reaching that would not be to ascertain as nearly accurately as possible the total amount of tonnage, lumber tonnage in our case, that was to be removed, and then to create a reserve out of the freight rate equal to a capital return that would, when the entire amount of timber was cut, equal the amount of the investment in the railroad plus its junk value?

A. Oh, yes; I understand this question now much better than I did before. In making any rate adjustment the volume of tonnage

is usually taken into consideration, and what that traffic will pay, in making any kind of a rate adjustment. With a fixed volume of movement for a branch line connecting with our railroad, or a connecting line or independent railroad, that would be the first thing that would be taken into consideration, the volume of
225 tonnage to be moved from that particular railroad, and the expense they would be put to in the building of the railroad, and whether the freight rates that could be obtained for the traffic would pay for the investment and a satisfactory return. That is always considered in making an extension of that kind. That would be a proper way in making settlements for accounts, after you had made your freight rates, for the accounting department to set aside a certain fixed amount for the net return.

Q. On your Illinois Central Railroad theoretically you are going to run forever. On our Fernwood & Gulf Railroad we have a self-limited proposition. Now, will you please explain to the commission from your point of view whether or not the two rate structures therefore should be similar upon railroads thus circumstanced?

A. No, sir; they should not. In other words, the short railroad which has only got a very short life, you might say; in fact, a life confined to its lumber tonnage, should not be treated like a standard line that has in addition to the local tonnage along its railroad through tonnage of considerable volume and which will support it after the local tonnage has been largely removed.

Q. Will you tell the commission how much through tonnage the Fernwood & Gulf would ever get?

226 A. The Fernwood & Gulf, in my opinion, will never get any. In other words, they connect with the Illinois Central on one side——

Q. You won't give us any, will you?

A. I would say no, we won't give you any tonnage to speak of, because we serve the northern and the southern territory. The New Orleans Great Northern Railroad I don't think would want to handle any tonnage with you, and they don't handle any through tonnage with you to-day, because they have their own routes to the northern and southern territories.

Q. In other words, we are between two through lines that can serve the same territory?

A. That is correct, and they do serve the same territory.

Q. The Mississippi Central has a territory and a tonnage that is a through tonnage, has it not?

A. Yes; the Mississippi Central Railroad is, in my opinion, an entirely different kind of railroad from the Fernwood & Gulf Railroad. In the first place, it has 160 miles of track and serves an important point, such as Hattiesburg, having a population, I would say, of about 12,000 or 15,000. That is only my estimate; it may be larger than that; then they have about 6,000 or 7,000 at Brookhaven,

and then when you get over there to Natchez they have got
227 about 15,000 there, and in addition to the merchandise traffic it handles to these large towns it has quite a well built-up territory along its railroad and forms a through route from the east to the west, handling stuff in connection with the New Orleans & Northeastern and Missouri Pacific through traffic.

If I am wrong about that Hattiesburg population, correct me; that is just an estimate on my part.

Q. I think they claim 25,000.

A. I have not been there since the camp was located there. Maybe they have grown since.

Q. Mr. Sheppard, how many short line railroads are there, roughly speaking, in the United States?

A. Oh, the Lord knows. I don't know. I haven't the slightest idea.

Q. There is enough of them to form an association and to get into Congress, isn't there?

A. Yes; they have been quite active in Washington recently in connection with different matters, but particularly in connection with handling traffic from connections. From my impression of the southern region there, it shows something like a hundred of them.

Q. There are over eight hundred of them altogether, are there not?

A. I don't know.

Q. Assuming there are over eight hundred, will you please
228 tell the commission how the principle established in this case with reference to the short line railroads, would affect the general earnings of this class of carriers?

A. If the commission should rule that in all instances the junction point basis should apply, and the tap line or short line should not be allowed any differential over the trunk line rates, in order to obtain a reasonable and proper compensation, I would say this, that the tap lines would all be forced into bankruptcy, because the measure of revenue which they would require would be so great as to make it impossible for the longer railroads to allow them satisfactory proportions, even though they were inclined to make such allowances.

Q. I will ask you whether or not your railroad is in position to make any additional allowances and absorb these arbitraries?

A. No, sir, we feel like we have gone the limit when we allowed them what the commission allowed them in the Tap Line cases, and we certainly are not prepared to allow them anything in addition to that.

Q. Your earnings are not such as to justify any additional allowances?

A. That is correct.

Q. If you were called on to make additional allowances,
229 state what would be the effect as to an advance or not in rates.

A. What do you mean by an advance or not—in rates?

Q. Whether you would not have to advance the whole lumber rates if you had to make additional allowances to the short lines.

A. That would be absolutely necessary, because we could not afford to allow them any additional earnings out of the present rates, and I don't believe the commission would revise the rule in any such manner, after declining to allow an advance east of the river, and pointing out as a distinguishing factor that the rates west of the river included the allowances and the rates east did not.

Q. No; but the effect of the doing away of the plussing of this junction-point rate would be to throw the burden on your road, would it not?

A. On who?

Q. On the trunk line.

A. No; it would throw the burden on the short line.

Q. Assuming, as I shall show directly, that they can not bear it and that it would have to be you?

A. Well, I don't believe it.

Exam. SMITH. I thought the testimony was leading up to
230 the Illinois Central having to bear it, and it would push it onto the poor public.

Mr. GREEN. No; your Honor, we will show that Mr. Sheppard has got to bear this burden before we get through.

Mr. SHEPPARD. As I pointed out, Mr. Green, we could not bear it. The commission has fixed the maximum shrinkages itself in the tap line cases, and we could not treat one short road with which we connect any different from another. In other words, we are shrinking the maximum now that we feel we can do; and as to the roads that are still under the tap-line decision, as some of these are, we could not even increase those if we wanted to, and besides that the commission had in mind what it thought was reasonable shrinkages of the trunk-line rates, and regardless of whether a road is under the tap-line decision, or an independent road, if that was a reasonable shrinkage in the trunk-line rate it is reasonable, regardless of how the road may be operated.

Q. (By Mr. GREEN.) As I understand it, this proposition extends not only to lumber but to all other commodities on these roads?

A. Yes, sir.

Q. So that if the present contention is sustained, there will be a cut off of all of the arbitraries on all of your other commodities?

A. It seems to me that would naturally result. We could
231 not treat lumber any different from other commodities.

Q. Have you any conception as to the amount of reduction that would thus be brought about?

A. No; but it would be an immense sum. It would be difficult to conceive the amount that it would go to.

Q. With that kind of a situation, what have you to say as to the ability of the carriers to stand it at the present time?

A. You mean the ability of the trunk-line or the short-line carriers?

Q. Yes, sir.

A. The trunk-line carriers are in such straits that they can not allow any additional proportions or revenues out of the trunk-line rates, and the result would necessarily be that the shrinkages would have to be borne by the short roads. It looks to me like this would not only prevent further development of these short railroads, but these that are already operating would be forced out of operation. In other words, they could not make enough to meet their expenses.

Q. The establishment of a principle of that kind, then, in your judgment, would simply thwart the future development of these short-line railroads?

A. I would say so; and I would say it would be extremely
232 unfair to the short roads to say to them that they must operate the main-line basis of rates when they have nothing to do with the main-line basis; that is, the fixing of it. They do not control the main-line basis of rates, and their only interest is in transporting the traffic from their own railroad up to the junction of their trunk-line connections.

Q. Will you please point out to the commission the amount of extra labor or service that there is entailed upon a short line by reason of that function, such as switching and so forth? You know that better than I do.

A. The short railroad as a rule has this to perform: It first has to move these cars from the interchange out to the loading point and then bring them back. In other words, it has a double haul. Having no through tonnage where they can drop the cars off and take cars in loaded and bring them out empty, and drop them off at the loading point, it has to perform a double haul.

Q. In other words, on this movement at Knoxo, it is not for 27 miles from Knoxo to Fernwood, but 27 miles from Fernwood out to Knoxo and then 27 miles back?

A. That is correct; yes, sir. Then the short-line railroads have to maintain the same car records and per diem records that a standard railroad has to maintain. It has to purchase its fuel and other supplies and pay the freight rate up to its junction point. It also
233 has to purchase its supplies in much smaller quantities than the trunk-line railroad, usually going in and paying a very high price for it, much higher than the larger road can contract for its supplies for its own railroad; and in addition to that it has to maintain an organization for the upkeep of 27 miles of railroad, or 32 miles, or however long the short line may be, similar to the organization of the large line, which does not have to divide its road up into 27-mile sections but has one man maybe to handle several hundred miles, making the tap line or short line's expenses much greater than for the longer line of railroad per mile of road.

Q. Will you please tell the commission whether or not a road of the kind and character of the Fernwood & Gulf, by reason of that fact, can be as efficiently and economically operated as a longer road?

A. In my opinion it could not. I have never had any connection with a short road, but my idea is that they could not be.

Q. As I understood your testimony here, you have picked out some 95 short lines in this southeastern territory that have been made the basis of your exhibits. Among those I notice there are the Jackson & Eastern, and the Meridian & Memphis, both located in the State of Mississippi, and which move on junction point rates. I will
234 ask you whether or not those two short lines are in any way connected with any industrial operation, and whether or not their construction was not for the purpose of obtaining connections by the citizens of Meridian, so as to advance the wellfare of that town.

A. In the first place, Mr. Green, I want to correct you, right at the start of your question, by saying that these roads in the Southeast were not picked out. We tried our best to get every road that is in the southern region in this statement. They are not picked. We tried to get every one of the short roads.

As to these particular roads you speak about, the Meridian & Memphis Railroad was built from Meridian, and its first connections were on lines serving Meridian, and I understand the Meridian people were the people that were backing the roads. However, I haven't any definite information on that point. The road subsequently was extended to Union, Mississippi.

The Jackson & Eastern Railroad was built from Union, Mississippi, which is the junction of the Gulf, Mobile & Northern, either west or southwest, I have forgotten which, and these two roads, the Meridian & Memphis and the Jackson & Eastern, were operated together for a while handling their traffic through Meridian. But the Meridian & Memphis end of it extending from Union to
235 Meridian, I believe, has been taken over now by the Gulf, Mobile & Northern. However, I don't think they have taken over the Jackson & Eastern. Just why that is or how it is, I don't know.

Q. Did I understand you correctly when you made the proposition that there was no blanket, in the true sense of the word, embracing the territory of origin in this case?

A. There was no blanket in the sense that I understand the term blanket, and that is, covering all the railroads in that territory. Therefore, as I pointed out, the Illinois Central Railroad fixed its adjustment as to what it thought it ought to be in order to meet certain competition, and some of the other railroads to the Central Freight Association territory and Ohio River crossings made their rate the same, but each road was controlled by itself individually as to what rates it would make, and there was no general investigation or general readjustment of rates such as was made west of the Mississippi River, whereby all of the rates of all of the roads in that territory, long and short, were put on a blanket or zone basis.

In other words, my understanding of the term "blanket basis" is a zone basis embracing all points in a certain described area,

236 regardless of the character of road on which they are located, and there is no such adjustment in the Mississippi Valley territory or in the southeastern territory, and where reference was made to the blanket adjustment in these territories they have reference to the rates applicable from trunk-line points only.

Q. Now, Mr. Sheppard, really has there ever been any segregation and separation of the territory east of the Mississippi River in the yellow-pine territory into two separate zones? I will ask you whether or not the designation of these two separate zones, or alleged separate zones, did not arise out of two different cases which were conducted before the Interstate Commerce Commission years ago—the Central Yellow Pine Association and the Tift cases?

A. Yes; that is where they developed the different sections of the country—that is, as to producing sections. There was really no separation of the territory as to the southeastern yellow-pine blanket or the Mississippi Valley pellow-pine blanket. It was all an extension of one forest, and the roads in those several territories—that is, the trunk-line railroads—fixed certain adjustments from their own territories, but they never did fix a blanket adjustment, nor did they separate the southeastern rate adjustment from the Mississippi

237 Valley rate adjustment.

The Mobile & Ohio Railroad has always been considered the dividing line between the southeastern territory and the Mississippi Valley territory, but when talking about the Mississippi Valley pine adjustment, they cut further east toward the L. & N. Railroad at Montgomery and Selma.

Q. So these boundaries are imaginary rather than real?

A. Yes; that is true, and as further illustrating that, even over in Georgia, certain parts of Georgia, they maintain to certain Ohio River crossings and to the territory beyond the same rates as from the Mississippi Valley territory, showing that there is no separation of territory from the rate adjustment standpoint.

Q. How far is the New Orleans & Northeastern located from the Illinois Central?

A. At its farthest point, Jackson, Mississippi, and Meridian, it is about 96 miles, and at Hattiesburg, 85 miles, and they gradually get nearer to our road as they get nearer to New Orleans.

Q. In the pine producing sections, how close do the two approximate?

A. In the southern pine producing section, anywhere from 25 to 50 miles, I would say.

Q. How far is the Mobile & Ohio east of that?

238 A. The M. & O. at Meridian is 96 miles east of the Illinois Central Railroad, and as it goes down to Mobile it gets farther from the Illinois Central. It would be over 100 miles, 125 or 130 miles, I would say.

To the territory north of the A. & V. the Mobile & Ohio comes closer to the Illinois Central, and both of them have some production of yellow pine north of the A. & V. Railroad.

Q. As I understand your exhibit, you show all of the interlocking roads between these north and south trunk lines, do you not?

A. Yes; my exhibits show that.

Q. The N. O. G. N. road was constructed and completed in about what year?

A. The construction of the N. O. G. N. began from Slidell, its connection with the New Orleans & Northeastern. I haven't just at this time information as to when the construction of this road began, but it was along about 1900, I would say, and it reached Jackson, Mississippi, its northern terminus, in 1909, the summer of 1909.

Q. The original roads in this territory were, first, the Illinois Central and the Mobile & Ohio, were they not, and the L. & N.?

A. And, I think, the A. & V.; that is an old road, too.

Q. And the A. & V.?

A. Yes.

239 Q. Then at that time there was none of these short roads connecting those four older lines?

A. No, sir; that is correct.

Q. Is it not a fact that in that time, which approximated, say, about 1900, or possibly a little before that, that there was no possibility of the pine that originated on the Illinois Central being moved over and moved north on the N. O. & N. E., and that which was on the N. O. & N. E. being moved over and being moved north on the Mobile & Ohio? In other words, is it not a fact that up to a comparatively recent time the timber that lay along these several railroads was bound to move over those several railroads to its destination?

A. Yes; and it did so move over the railroads. In other words, we did not participate in the handling of New Orleans & Northeastern business, nor did we participate in the handling of Mobile & Ohio business until after it reached Cairo. They turned some of it over to us at Cairo, and possibly some at Rives, a junction just below Cairo; but they did not turn over to us in the pine-producing section any of the tonnage originating on their road, nor did we turn over to them tonnage originating on our road.

The same is likewise true of the A. & V. Railroad. However,

240 the A. & V. Railroad did give us some of their tonnage originating at Meridian and such points as that via Jackson, Mississippi.

Q. Therefore each of these railroads in those years had when these rates were being framed its local tributary timber that was solely utilizable by it?

A. That is right; yes, sir.

Q. How far does the price of a commodity enter into and find expression in the amount of the freight rate to be charged for the transportation of such commodities?

A. That is difficult to say, Mr. Green. It is always customary, or generally customary, in the making of any freight rate to take into

consideration the values or prices of that article; but when you get into the consideration of prices on lumber or clothing or other articles it is pretty difficult to arrive at any proper conclusion as to just how much to include for the increased liability due to the valuation. But that factor is always controlling in the making of any general line of freight rates.

In other words, the greater the value of the commodity the better freight rate it can stand and move.

Q. I will ask you, please, whether or not the price or value of the commodity is not possibly the most important element in the fixation of a rate of freight?

A. No; I would say the value was not the most important. I
241 think competition is largely the most important factor in the fixing of any freight rate. Value is always considered along with other things. Operating difficulties are frequently considered; character of the packages, and so forth, and volume of traffic, too, is another thing that is very important in considering a freight rate—the approximate volume of traffic.

Mr. GREEN. That is all.

Cross-examination.

Q. (By Mr. PALMER.) You were speaking, Mr. Sheppard, about not being able to increase your shrinkage in the junction-point rate in order to extend the rate back to the tap line or short line. Do I understand you to mean by that that you can not do it under the tap-line decision?

A. No; I mean this, Mr. Palmer, that we have got one railroad in here, for example, the Fernwood & Gulf, and the shrinkages of that particular road were originally limited by the tap-line decision. They have since been released, and if we were so inclined we could increase those divisions or shrinkages, but when we undertake to increase the Fernwood & Gulf Railroad that would give them an advantage over a railroad just south of them, for example, like the Natchez, Columbia & Mobile, where the proportion would be limited by the tap-line decisions. The very minute we would do that
242 we would be confronted by the question of discrimination. That was the point I intended to convey.

The second point I wanted to convey was that our returns to-day are such that we could not even consider increasing our shrinkages to any of these roads.

Q. What is the highest division you allow on lumber to any of these east and west lines?

A. The maximum as prescribed by the Interstate Commerce Commission in the Tap Line case. That is, if you mean short lines similar to the Fernwood & Gulf Railroad.

Q. What do you pay the Mississippi Central?

A. At the present time the divisions with the Mississippi Central are of no importance whatever. These rates, in other words, are divided on a basis as fixed by the Railroad Administration. As far

as divisions are concerned, that is not a material matter between the interested roads at this time.

However, as to our allowances prior to Government control, we did not allow them a bit more than we had to and were compelled to by the competition through the New Orleans & Northeastern Railroad; and regardless of what our proportions were that we allowed them, the commission has fixed as maximum shrinkages what they consider reasonable shrinkages in the short-line junction-point
243 rates. Now, if we have to go further than that in connection with another road, because of competition, that is meeting an entirely different situation.

Q. As a matter of fact, your uniform division with the Mississippi Central was 6 cents?

A. Prior to Government control we allowed the Mississippi Central Railroad a proportion of 6 cents per hundred pounds to the northern territory. It was not——

Mr. AUBURTIN. A maximum of 6 cents.

The WITNESS. A maximum of 6 cents, yes, to the northern territory. There was some portion, but not considerable, of the traffic on which they accepted less than 6 cents. However, as I stated, the rates and divisions were fixed before the Mississippi Central got to Jackson, and that is true——

Mr. AUBURTIN. Not Jackson, Brookhaven.

The WITNESS (continuing). And that is true likewise of the G. & S. I.

Yes, it had its connection at Hattiesburg, but it reached Jackson, and the same is true of the Gulf, Mobile & Northern Railroad, which connects with our road at Ackerman, which had its connection, its rate adjustment, and its divisions fixed before it reached Ackerman.

Q. (By Mr. PALMER.) Speaking about the Fernwood & Gulf not being able to get along with any less than it is getting, and
244 particularly with reference to this examination by Mr. Green, and the question of the timber supply and the necessity for setting aside a reserve, that would apply, of course, in case a road was built out there as a purely independent commercial proposition, but suppose it was built out there primarily by a logging or lumber company for the purpose of logging to its own mill. Does it not seem reasonable to you, as a traffic man, if they could induce some other mill to locate on their track and get some paying traffic out of it, that it would be to their advantage to do so?

A. It is to their advantage to locate as many mills as they possibly can on their tracks, and all the tonnage they can get helps them out just that much, and I think they have shown a pretty fair spirit when they made the rate two cents over the junction point, instead of making it the full local rate over the junction point.

Q. It was business on their part to do it, was it not? It was not a purely philanthropic thing for them to invite the Swift Lumber

Company to locate on their line; there was business in it on the theory that they were getting some additional returns?

A. There was business in it and there were other considerations in it, too. I understand the Fernwood & Gulf Railroad did not want the commercial business, they were not particularly after the
245 commercial business, but they had timber scattered throughout this section there and they were extending to get to that timber, and wanted to get the necessary right of way and things of that kind, and it was necessary, in order to do that, to serve those people down there and keep them satisfied.

Q. Of course, it is not my purpose to criticise anybody connected with the transaction at all, but simply to point out that under those conditions it would be a proposition having a little different aspect from that of purely operating a railroad for traffic and for the public.

A. Anything the Fernwood & Gulf Railroad could pick up in addition to their regular tonnage they would be benefitted to that extent.

Q. That is true. That is all I wanted to get at.

A. Well, I say they would be benefitted to that extent, but they would not build a railroad, I don't think, or nobody else would build a railroad out there, just for the Swift Lumber Company's tonnage.

Q. Oh, certainly not.

A. If they could pick up something during the meantime they ought to do it, and whatever they picked up ought to pay a reasonable transportation cost from the originating point down to the junction point, and the people that are benefitted by that transportation ought to pay for it and not the trunk-line connection,
246 which has nothing to do with it. In other words, the Swift Lumber Company ought to pay for it.

Q. You were speaking just now about competition being the most important factor in the making of a rate, which is reminiscent of something in your direct evidence about meeting the tap-line situation established by the Mobile & Ohio and the New Orleans & Northeastern. In other words, if I recall it correctly, you said you learned that those two roads were making an allowance to the short lines connecting with them out of the junction-point rate, and you did that in order to protect the short lines connecting with the Illinois Central against that competition?

A. Yes, the tap lines' mills and the short lines themselves connected with our line.

Q. Now, bearing that in mind, and with the information here of record that this same Mobile & Ohio and New Orleans & Northeastern, and also the Gulf, Mobile & Northern are extending the junction-point basis of rate back to points on various short lines, do you know of any reason why different principles should apply in that case from the principle you applied in the original inception of the tap-line situation?

A. Yes. In the first place, I don't think the Illinois Central or any other railroad should undertake to fix rates from an in-
247 dependent connection. I think that ought to be left to the independent connection. In other words, the independent connection, if it is going to have any independence at all, ought to be left free and independent to fix the rates on its own rails, and that is the very point I wanted you and the commission to get clear, that we have not undertaken to fix the short line's rates or revenues.

We have fixed from the entire producing section, the junction points where we connect with the short line, certain maximum shrinkages. We have subsequently revised those in accordance with the commission's tap-line decision, and everything that is added to the rate, so far as the Illinois Central is concerned, we are not interested in. It goes to the originating railroad, goes to pay it for the transportation of the traffic from the originating point to trunk-line junctions, and is in addition to what the Illinois Central received.

Now, if the Mobile & Ohio Railroad adopts a different policy and wants to extend its rates into the forest because its lumber along its road has been cut out, there is absolutely no reason why the Illinois Central Railroad should be compelled to adopt the same policy, or why the Fernwood & Gulf Railroad should be compelled to adopt the same policy, if those roads are to maintain their independence.

248 Q. Well, it is a very beautiful theory, but it does not take into consideration the rights of the shippers. I believe that is all I care to ask.

Redirect examination.

Q. (By Mr. HUMBURG.) Mr. Sheppard, will you state whether or not it has been your observation that as time goes on the relative value of the lumber coming from the points beyond the junction points on the short lines is increasing compared with the volume that is coming from the points on the trunk lines in the yellow-pine producing district?

A. I do not know as I get your question entirely clear, but as I understand it it is this: The tonnage along the trunk lines is first cut out. That is usually the practice. It is practically all cut out first. Then the lines are extended into the forest, usually by the proprietary mill which is located at the junction point, and it extends into the interior, and as the lumber tonnage along the trunk line goes down the tonnage along the tap line, or the short line, increases, until it is entirely cut off of the tap line, and then there is no further traffic for the tap line, or short line.

Q. So that looking to the future and considering this as a question of the interests of the community and the country, and the
249 development of undeveloped sections of the country, the interests lie in the extension of the short line penetrating the timber where there is timber left?

A. I would say yes.

Q. That is all.

Exam. SMITH. Is that all of this witness?

You are excused, sir.

(Witness excused.)

GEORGE B. AUBURTIN was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Q. (By Mr. HUMBURG.) Will you state your connection with the Railroad Administration?

A. I am assistant general freight agent of the New Orleans Great Northern Railroad at New Orleans, Louisiana.

Q. You have been with that road for some time and are familiar with its rate adjustments?

A. Yes, sir; I have been with them for thirteen years.

Q. Have you heard the testimony of Mr. Sheppard in this case?

A. I have.

Q. What have you to say as to adopting it on behalf of that road, or qualifying any part of it?

A. I confirm in every way what Mr. Sheppard has said, and
250 particularly with reference to the propriety of the Fernwood & Gulf making its own rates.

In other words, they are better situated than anyone else to do so, and as an independent railroad they have that power.

The New Orleans Great Northern Railroad, when it was completed to Tylertown, Mississippi, which was in about 1909—the Illinois Central already had its connection with the Fernwood & Gulf at Fernwood, Mississippi, and the rates were all fixed and there was nothing else left for us to do but to adopt them.

That was also true of the line when it was completed to Jackson, Mississippi, on July 1, 1909. We built from Slidell to Jackson. The rates were all fixed in this territory, and being an independent railroad we had to adopt the same rates as were published by lines surrounding us, principally the Illinois Central on the west and the New Orleans & Northeastern on the east, and the Alabama & Vicksburg on the north, and the Louisville & Nashville at New Orleans.

Q. The map made a part of Sheppard's Exhibit No. 6 correctly shows the location, course, and direction of the New Orleans Great Northern Railroad with respect to the Fernwood & Gulf?

A. That is correct; yes, sir.

Q. You have a sort of branch line, I understand, tapping
251 the Fernwood & Gulf at Tylertown?

A. Yes; we have a 41-mile branch from Rio, Louisiana, to Tylertown, Mississippi, connecting with the Fernwood & Gulf at Tylertown.

Q. (By Mr. GREEN.) When was that completed, Mr. Auburtin?

A. I rather believe it was the fore part of 1909 or the latter part of 1908.

Q. Getting down to the financial conditions of the short-line railroads, comparatively speaking, in our section, have you compiled any figures as to your earnings?

A. I have here an income exhibit, one copy, which I don't think it will be necessary to file, as I can give the figures.

Q. That is, just give a generalization?

A. Yes; I am just going to give it in a nice easy way.

Exam. SMITH. Is there any substantial difference between the figures you are about to read into the record and those that you furnished the commission in your annual statement?

The WITNESS. These, Mr. Examiner, are not a full year.

Exam. SMITH. But there is nothing inconsistent between what you have reported in the past and these figures?

The WITNESS. No, sir; these figures I am going to mention were taken from the records of the Interstate Commerce Commission in Washington, on November 22, 1919.

252 Exam. SMITH. They were taken from the figures you returned to the commission?

The WITNESS. Yes, sir. The New Orleans Great Northern Railroad in the first nine months of 1918 earned 107.7 per cent of its compensation. By compensation I mean what the United States Railroad Administration, or the United States Government, allowed us for the use of our railroad during the war time.

For the same period of 1919 we have only earned 12.5 per cent, showing a deficit of 87.5 per cent for that railroad.

That should clearly show that the New Orleans Great Northern Railroad is not in any position to allow the Fernwood & Gulf, or the Natchez, Columbia & Mobile Railroad, any greater allowances out of the junction point rate, if the commission should decide that was a proper basis of rates from those stations; and if they did require a greater proportion, or rather demand that, or if the commission even went into the feature of divisions and stated that the trunk lines would have to allow them, we would have to withdraw from the business.

Cross-examination:

Q. (By Mr. PALMER.) How do you explain that drop?

A. The terrific increase in wages and the decrease in traffic.

253 Q. Which was the greatest factor, increase in wages or the decrease in traffic?

A. I couldn't answer that correctly. I don't know.

Q. Couldn't you say in a general way?

A. There has been a great decrease in our traffic from the period of war—that is, from the time the armistice was signed up to date—and there have been several increases in the wages, including the back pay, unfortunately.

Q. Wouldn't you say they were probably about equal factors?

A. I wouldn't say, because I couldn't answer that question correctly.

Exam. SMITH. Is that all?

Mr. PALMER. I have nothing further.

(Witness excused.)

Exam. SMITH. We will adjourn until 9.30 o'clock to-morrow morning.

(Whereupon, at 6 o'clock p. m. on December 18, 1919, an adjournment was taken until 9.30 o'clock a. m. on December 19, 1919.)

255 CHICAGO, ILLINOIS, *December 19, 1919—9.30 a. m.*

Commission met pursuant to adjournment.

Present as before.

Exam. SMITH. Gentlemen, we will resume.

Mr. GREEN. Your honor, it is a little out of order, but Mr. Kimball has kindly agreed to make a little statement so as to save putting Mr. McElroy on the stand.

Exam. SMITH. Very well. You may proceed, Mr. Kimball.

J. B. KIMBALL was recalled for further examination, and, having been previously sworn, testified as follows:

Direct examination:

Q. (By Mr. GREEN.) Mr. Kimball, I hand you some names. Will you please explain what they are?

A. This list contains several names of individuals who live at stations on the Fernwood & Gulf Railroad, and who are in business and have shipped lumber, and it is assumed will ship some lumber over the F. & G. in the near future.

The first name is R. T. Simmons, at Kokomo. Mr. Simmons owns a gin sawmill and a general store. He does not operate his sawmill continuously.

At Knoxo the Swift Lumber Company is in the lumber manufacturing business only, and operates continuously.

256 William Bilbo has recently built a mill and is hauling his lumber and shipping it from Knoxo.

At Tylertown Q. D. Sauls has a small saw mill. I know he sells considerable lumber to the local trade there and does ship lumber.

At Mesa the Lexie Lumber Company is hauling lumber to this station and shipping from there.

S. A. Simmons, at Mesa, has a saw mill, a gin, and a store. Also a large farm. He runs his mill occasionally, but not regularly.

At Kioto H. M. Lee has a saw mill and has shipped lumber. I would say in connection with that this mill has not run recently.

At Conerly G. W. Vaught; this man has built a saw mill within the last few months, and he runs continuously, regularly.

At Barto J. M. O'Quinn is preparing to ship lumber. This mill is being rebuilt and will probably be in operation shortly. This mill has, as this memorandum says, in the past shipped considerable quantities. I presume that is right.

That is all that is on the list.

Q. Thank you, sir.

Cross-examination:

Q. (By Mr. PALMER.) What is the size of those operations,
257 Mr. Kimball?

A. They are small. With the exception of Mr. Vaught and Mr. Q. D. Sauls, I would say that their operations were merely supplementary or more properly a part of their business only, not their entire business. They are generally referred to as small mills.

Q. Not what you would call an ordinary commercial lumbering proposition?

A. No; not in the general use of the term.

Exam. SMITH. Is that all of Mr. Kimball?

Mr. GREEN. Yes.

(Witness excused.)

J. M. FUSH was called as a witness and, having been duly sworn, testified as follows:

Direct examination.

Q. (By Mr. GREEN.) Give your name, residence, and occupation, please.

A. J. M. Fush; residence, Fernwood, Mississippi; general auditor Fernwood & Gulf Railroad.

Q. How long have you been in the auditing business?

A. Close to sixteen years.

Q. What experience have you had?

A. Well, I have practically been in accounting work for sixteen or seventeen years, which covers all the time doing work, and for the last seven years I have been holding executive positions as auditor.

258 Q. Were you qualified?

A. Qualified.

Q. How long have you been connected with the Fernwood & Gulf?

A. Since August 1, 1918.

Q. I will ask you to tell the commission, please, and introduce as Exhibit 1 to your testimony, the order with reference to the termination of the Tap Line case, so far as the Fernwood & Gulf Railroad is concerned.

A. The Tap Line case was decided by the commission in Docket No. 11.

Q. Investigation and suspension?

A. Investigation & Suspension Docket No. 11, decided in Washington, D. C., on the 21st day of December, 1914.

Q. And your railroad has been on its independent basis since that date?

A. Yes, sir; showing the officers and everybody are separate from any other company.

Q. Where does your railroad run?

A. It extends from Fernwood to Kokomo, a distance of approximately 32 miles.

Q. You are not under Federal control now?

A. No.

Q. Under qualified Federal control, cooperative contract?

259 A. Cooperative contract, but that just regulates the transportation business more than any earning. We stand on our own hook on our earnings.

Q. What kind of tonnage is handled by your road?

A. Principally forest products. I will put in Exhibit No. 1, showing the amount of tonnage shipped for the last three years, as taken from the report to the Interstate Commerce Commission.

Exam. SMITH. That will be marked "Exhibit 14."

(The document was thereupon received in evidence, marked "Defendants' Exhibit No. 14, Witness Fush," and is forwarded herewith.)

The WITNESS. This exhibit will show that the lumber and other products of the forest were approximately 93 per cent for the last three years.

Q. (By Mr. GREEN.) This is to represent, if I understand it correctly, the per cent of each class and kind of tonnage handled by that railroad during the period in question?

A. Yes, sir.

Q. Please state whether this is correctly made?

A. It is taken from the records as reported to the commission in the annual reports.

Q. Then this is a recapitulation?

A. That is it; yes, sir.

260 Q. Of the figures handed in to the commission?

A. It is a copy; yes, sir.

Q. Now, if you will, please, state whether you have obtained any information, and if so, what, as to the probable length of the manufacture of forest products along the line of this railway?

A. Yes, sir.

Q. Please state the result of that.

A. I have here an exhibit from one of our shippers that practically owns 85 per cent of the future tonnage that the railroad may derive. This letter will show that in practically ten years the timber will all be cut.

Q. You are familiar with that situation down there, living at Fernwood?

A. Yes, sir.

Q. From your knowledge is that correct?

A. I consider it very correct.

Mr. GREEN. I will offer that in evidence as Exhibit No. 15.

(The document was thereupon received in evidence, marked "Defendants' Exhibit No. 15, Witness Fush," and is forwarded herewith.)

Q. (By Mr. GREEN.) Mr. Fush, have the properties of this company been subject to inspection and investigation by the valua-

261 tion section of the Interstate Commerce Commission?

A. Yes, we had the report made as of June 30, 1916, both the engineering and the accounting.

Q. Have you the engineering report with you?

A. I have the engineering report.

Mr. GREEN. Mr. Examiner, do you want an actual introduction of that, or just make reference to it?

Exam. SMITH. Just introduce the summary that you want. There is something that we can check with, without putting the whole report in.

Mr. GREEN. The docket number of that, Mr. Fush, is what?

The WITNESS. It is docket No. 14.

Exam. SMITH. Valuation docket?

The WITNESS. Yes.

Exam. SMITH. Let me see it. Engineering Report upon Fernwood & Gulf Railroad Company.

Q. (By Mr. GREEN.) Please look at that report, Mr. Fush, and tell us the values fixed by the commission, from their summarized figures.

A. They show here on page 4 of the summary sheet of the Interstate Commerce Commission, Division of Valuation, D. V. Form No. 563, showing the inventory as of June 30, 1906, approved by W. D. Pence, engineer in charge. This report will show that the road has
262 gone down to such an extent——

Q. Give us first the value of the things they show, please, sir.

A. They show the cost to reproduce the road, $661,141. The value less proper depreciation is $522,752.

Q. Giving a net value as of that date of what amount?

A. $522,752.

Q. That is charging off for depreciation?

A. Yes. That would be in round number $141,000 depreciation.

Q. Turning to your depreciation of $141,000, I will ask you whether or not there is any depreciation at all set up on your books as a reserve to cover that?

A. None except the equipment, which is compulsory.

Q. Why didn't you set up a reserve?

A. We didn't have the money, or rather our expenses were so great that we had a large deficit without any reserve setting up, and it is optional with the carrier as to whether you carry depreciation on your roadway.

Q. The reason we did not carry it was because we could not?

A. We could not, and it is not the policy of the short lines where the deficits are so large to carry depreciation or reserve, as the case may be.

Q. In other words, it would show a worse looking oper-
263 ating statement than if they were charged in?

A. Yes, sir; and I might also add that Mr. Hewitt, one of the traveling examiners, suggested that we leave out that depreciation; that our road was not in shape to carry a reserve.

Q. Now, let us take the elements with reference to the reserve that are most vital. How long does a crosstie last down there in the section where you are?

A. Between four and four and a half years.

Q. What does the commission say should have been set up as a reserve for that?

A. Our ties are depreciated 50 per cent.

Q. From what figures to what figures, please?

A. That is the difference between the cost of production and the value, less depreciation, or the ties to reproduce is $60,918; and deduct depreciation would allow a value of $30,460. In other words, this $30,460 represents the value of the ties as of that date, the date of inventory. If they were new, they should be worth $60,000. Or, in other words, we should have had a reserve of $30,000 set up as of that date to cover replacement.

Q. Mr. Fush, will you please tell the commission whether or not a reserve of that kind in the section where the Fernwood &
264 Gulf is now located would be at all adequate at the present price of ties to replace the needed ties?

A. Will you repeat that question again?

Q. Read the question, please.

(Question read as above recorded.)

A. No; because in the fluctuation of prices the cost of ties has gone up at least 70 per cent since this date.

Q. Due to our conditions down there, what has been our policy with reference to ties?

A. We just buy them and put them in as we need them. In case we would have a wreck of some kind we would have to put ties in, and we would go and buy some ties.

Q. Please state to the commission whether or not this railroad has been able to keep up its ties in the condition it ought to have kept them up; and if it has not, why it has not?

A. Well, to be frank with you, we did not have the money.

Q. How many new ties are needed on your road right now?

A. The last estimate I figured on that, we should now figure 73 per cent to put the road up in proper shape. In other words, figuring the amount of ties and four years since we bought the ties, the ties have practically worn themselves out.

Q. In other words, three out of every four of your ties, in the normal course, would need replacing now?

265 A. Correct.

Q. How much approximately would that cost at present prices?

A. Well, a crosstie that we use laid down in the track is close to 61 or 62 cents.

Q. How many to the mile are there?

A. The average, as I remember it, is 2,800 ties to the mile. I am not sure about that.

Q. About three thousand?

A. Maybe three thousand. That is just my estimate. I really don't know. Three thousand ties.

Q. Let us take another one of the items of rapid depreciation; what is the condition of your bridges?

A. According to the commission's report, the cost of new bridges was $97,194. Deduct proper depreciation would make a value of $56,713, which is practically 42 per cent that we should have set up to cover replacements or reserve for bridges.

Q. Let us take the actual facts as to our bridges; what shape are they in?

A. They are in bad shape; some of them are. I know particularly there was an accident come up this past week. We had a washout down there due to the excessive rains, and a part of our bridge, or rather the part leading up to the bridge there, an old dam,
266 broke loose, and to get the track up quick we got a man there from the Illinois Central to come out and suggest the quickest way to get the thing up.

Q. Who was that?

A. Mr. Stockton.

Q. Tell the commission what really happened.

A. He came up and said the best way would be to get his crane and pick up the engine, but he said the bridges he had seen from coming out on the track were in such condition that they would not stand for his equipment going over them, and we would have to use other means.

There are other bridges farther out toward Knoxo, at Tylertown, that are in bad shape.

Q. Where was that engine that they were going to pick up?

A. About thirty feet down in the ground.

Q. You had, then, a very serious wreck on your road?

A. We did. I imagine, not figuring on any personal damages that may arise, that it will come close to $10,000 to clean everything up and put it all back in shape.

Q. With regard to the derailments on your line, are they frequent now, comparatively speaking, or not?

A. I don't like to talk about our road so much, but we have had an average of wrecks of one a month. As to the derailments,
267 the track kind of spreads, the ties loosen up, and the engine goes onto the ground, and there is a three or four hours' delay. But this last wreck has been the worst we have had for a couple of years, and just two days before the wreck I was speaking of there were two derailments right there in one night in the yards, ties that ought to have been in there, but we just couldn't get the ties and didn't have the money to pay for them.

Q. Talking about the money to pay for them, how much bills payable has your railroad now, and why has it got them?

A. Well, we have bills payable here, for instance, of $20,000; that is just some money borrowed from the banks to keep up the pay roll and such things as that.

Q. Pay roll and what else?

A. And incidental items that come up every month.

Q. Taxes?

A. Taxes. That will be increased about the first of the year if our taxes pile up on us to about $40,000 the first of the year.

Q. Have you any reserve set up for your taxes?

A. We have a reserve, yes; but it won't be sufficient to meet the taxes; as they develop that country down there, build schools, and so forth, the taxes go up at least 15 or 20 per cent a year.

268 Q. Are you going to have the money to pay your taxes this year, or have you got to borrow?

A. I have to borrow at least 50 or 60 per cent of the amount I will pay, because this wreck will take all our current funds.

Q. This $20,000 that you have already borrowed, what was that utilized for?

A. Well, just practically current expenses as they come up. We had to pay some bills, something we had bought, or due for labor, and we did not have any money in the bank, and we just went ahead and borrowed it so we would have it.

Q. It is actually for your current expenses?

A. That is what it is; yes, sir.

Q. Have you an exhibit of that situation down there?

A. Yes, sir. I will introduce as——

Q. Just a moment before getting to that. Let us return for a moment to your valuation. Are there any other figures in the valuation report that you desire to call the commission's attention to?

A. I have the commission's comments, or rather the description of the characteristics of the road, that I would like to introduce as an exhibit.

Q. All right, sir.

Exam. SMITH. Now, right there, have you anything from
269 the commission, or is that the report of the commission, or is that merely the report of the engineers in charge to the commission, on which the commission's report will ultimately issue?

Mr. GREEN. Your honor is correct in his definition; this is the report of the engineers to the commission.

Exam. SMITH. And has that been accepted by your road?

Mr. GREEN. Yes, sir.

The WITNESS. Yes.

Exam. SMITH. You have concurred in that?

Mr. GREEN. Yes, sir.

Exam. SMITH. So that there is no contest between the road and the valuation engineers?

Mr. GREEN. No, sir. In fact they gave us a little more as I understand it than possibly our books showed.

Exam. SMITH. And if the commission agrees to that, that will be the commission's report?

Mr. GREEN. In that aspect of it.

Exam. SMITH. Yes.

Mr. GREEN. Yes, sir.

Exam. SMITH. But there is nothing from the commission as yet?

Mr. GREEN. As yet; no, sir.

The WITNESS. The tentative valuation has been issued,
270 and as far as the engineering report is concerned we have accepted it. That is where I got that docket number; I think it was 54 instead of 14. I will introduce this exhibit in evidence.

Exam. SMITH. That is from the record of the engineers to the commission?

The WITNESS. Yes, sir.

Exam. SMITH. And as I understand it the road concurs in that report?

Mr. GREEN. Yes, sir.

Exam. SMITH. Make no exception to it?

Mr. GREEN. No, sir.

Exam. SMITH. So you really introduce this as your own testimony?

Mr. GREEN. Yes, sir.

Exam. SMITH. It will be received.

(The document was thereupon received in evidence, marked "Defendants' Exhibit No. 16, Witness Fush," and is forwarded herewith.)

Q. (By Mr. GREEN.) I wish you would turn to the exhibit you had just a moment ago, and we will resume our discussion of it. You have, as I understand it, bills payable of $20,000?

A. Yes, sir.

271 Q. I will ask you to introduce it as the exhibit covering the balance sheet of the Fernwood & Gulf for the month of June, 1919, showing the liability side.

(The document was thereupon received in evidence, marked "Defendants' Exhibit No. 17, Witness Fush," and is forwarded herewith.)

Q. (By Mr. GREEN.) You have a capital stock there of $100,000?

A. Yes, sir.

Q. Have any dividends ever been paid on it?

A. None whatever.

Q. You have a first mortgage bond issue of $450,000; what interest does it bear?

A. Well, the bond interest has been paid on that.

Q. What interest rate does it bear?

A. How is that?

Q. What interest rate do the bonds bear?

A. Six per cent.

Q. All have been paid, or is any of it in default?

A. No; the interest has been paid. They won't accrue until 1930, but there is no reserve sinking fund set up for the payment of them when they mature.

Q. There is no sinking fund at all?

A. No, sir.

Q. Now, note on equipment, $58,000; what equipment is that?

272 A. That is the equipment we are now using, the engines and box-car and flat-car equipment. We were not in a position to pay for it, so we just gave our note, and we found somebody that would trust us that way and carry our paper.

Q. You have got a traffic and car service balance payable of $3,319.72, and audited accounts and wages payable of $11,173.83?

A. That traffic and car service balance total represents items that we owe foreign lines, or lines that we do business with.

The audited accounts and wages payable represent vouchers that are payable. Also pay-rolls, the major portion of that being pay-roll items.

Q. This exhibit is correct?

A. Yes, sir.

Q. Have you the asset side?

A. Yes, sir.

Q. Please introduce that.

A. I will introduce Exhibit No. 18, being the general balance sheet of the Fernwood & Gulf Railroad for the month of June, 1919, assets.

(The document was thereupon received in evidence, marked "Defendants' Exhibit No. 18, Witness Fush," and is forwarded herewith.)

273 Q. (By Mr. GREEN.) The total amount of cash you had on hand as of that date was $7,000, about, with which to pay these liabilities?

A. Yes, sir.

Q. And you have had an accident, as I understand it, down there, in which one man was killed, two hurt, and the property damage alone will approximate $10,000?

A. Yes, sir; that is correct.

Q. This exhibit of assets represents your property value down there as carried on your books?

A. Yes, sir.

Q. I will ask you whether or not you have taken the trouble to figure out the estimated loss as of the period of the end of operation; and if so, make an exhibit with reference thereto.

A. Yes, sir.

Exam. SMITH. Let me see now, is he going to offer an exhibit showing what his calculation is as to the ultimate loss in this operation?

Mr. GREEN. Your honor, I think it would be better to get that exhibit and show it to you. In other words, in 1931 it shows where we will land on this proposition, when we haven't any more timber.

The WITNESS. In our Exhibit No. 13 or 14, whatever one it

274 was, Mr. Examiner, we have an exhibit showing that a shipper that controls 85 per cent of the uncut timber will be cut out in ten years. We have extended it for two more years to take in any stuff that may accumulate; and also due to Exhibit No. 14, where

we show our forest products as 92 per cent. So we want to introduce an exhibit here showing that in 1931, or twelve years from date, we will not have sufficient tonnage to continue.

(The document was thereupon received in evidence, marked "Defendants' Exhibit No. 19, Witness Fush," and is forwarded herewith.)

Exam. SMITH. I would not elaborate on that too much. The exhibit speaks for itself.

The WITNESS. In preparing this exhibit——

Mr. GREEN. The examiner has expressly said that the exhibit shows for itself, and I think on its face it shows what it is, Mr. Fush.

Exam. SMITH. Your lumber will be gone; that is really the basis of that exhibit, is it not?

Mr. GREEN. Yes, sir. Have you made an analysis of your profit-and-loss account?

The WITNESS. Yes, sir.

Q. (By Mr. GREEN.) I will ask you to introduce that exhibit, please, sir.

A. That will be Exhibit No. 20.

275 (The document was thereupon received in evidence, marked "Defendants' Exhibit No. 20, Witness Fush," and is forwarded herewith.)

Q. (By Mr. GREEN.) That exhibit is correct, is it not?

A. That exhibit is correct. It is taken from the records as reported to the Interstate Commerce Commission, with the exception of the period of 1919, which will not go to them until the end of this year.

Q. Have you made an exhibit of that, entitled "Capital"?

A. Yes, sir.

Q. I will ask you to introduce it, please.

(The document was thereupon received in evidence, marked "Defendants' Exhibit No. 21, Witness Fush," and is forwarded herewith.)

Q. (By Mr. GREEN.) State whether or not it is correct.

A. It is correct. It is taken from the records as reported to the Interstate Commerce Commission, with the exception of 1919, which will go to them at the end of this year.

Q. On the assumption of ceasing to operate them, at the time heretofore indicated, have you made an exhibit of the salvage available?

A. Yes, sir.

Q. And upon what basis was that salvage figured?

A. That salvage was based on the prices allowed by the

276 engineers of the Interstate Commerce Commission, which was shown in Exhibit 16.

(The document was thereupon received in evidence, marked "Defendants' Exhibit No. 22, Witness Fush," and is forwarded herewith.)

Q. (By Mr. GREEN.) I will ask you, please, whether you have made an exhibit with reference to the estimated results of operation up to

June 30, 1931, assuming the facts heretofore stated as to ceasing operations as of that date to be true, and if so, please introduce that exhibit.

(The document was thereupon received in evidence, marked "Defendants' Exhibit No. 23, Witness Fush," and is forwarded herewith.)

A. I have prepared Exhibit No. 23, showing the estimated results up to June 30, 1931, applied in connection with the necessary reserves required to protect the original average investment.

Q. (By Mr. GREEN,) Mr. Fush, I notice on Exhibit No. 23, that you have there listed Exhibit 4, Exhibit 3, Exhibit 7, and Exhibit 2. Now, your exhibit number having been changed, I will ask you to give to his honor the correct numbers to be inserted at those several points.

Mr. HUMBURG. Old Exhibit No. 4 is what?

The WITNESS. No. 4 is now 21.

277 Mr. HUMBURG. And old Exhibit No. 3?

The WITNESS. It is now No. 22.

Mr. HUMBURG. And old Exhibit No. 7 is what?

The WITNESS. 17.

Mr. HUMBURG. And old Exhibit No. 5?

The WITNESS. It is now Exhibit No. 20.

Mr. HUMBURG. And old Exhibit No. 2?

The WITNESS. It is now Exhibit 19.

Q. (By Mr. GREEN.) Have you any other exhibits, Mr. Fush? If so, state what they are and introduce them.

A. I have an exhibit here showing the results of operation during the period of reparation which I will introduce as Exhibit No. 24.

(The document was thereupon received in evidence, marked "Defendants' Exhibit No. 24, Witness Fush," and is forwarded herewith.)

The WITNESS. This exhibit will show the actual results of operation, and what additional loss we would sustain if we did not have this plus charge. Or in other words, if we did not have the plus charge we would have lost $18,000.

Q. (By Mr. GREEN.) As I understand this case, if the arbitraries on the other commodities other than lumber were withdrawn, the operating deficit would be increased?

278 A. There is no doubt of it.

Q. Can you tell the commission approximately how much the operating deficit would have been increased if these arbitraries on the other commodities had been withdrawn?

A. No, sir.

Exam. SMITH. That would be a guess at the best.

Mr. GREEN. All right, sir. As I understand this exhibit, the net result of operation for the last two years is that with this arbitrary we have lost $6,192.18?

The WITNESS. Yes, sir.

Q. (By Mr. GREEN.) And if we had our arbitrary taken away from us, we would have lost approximately $18,000, or nearer $19,000?

A. That is correct. This exhibit does not bring out any other reserves that should go in there for replacement, such as ties or other items that go into roadway. They are not included in there. The only reserve set up is for the equipment.

Q. Have you any reserve set up in there to pay for accidents?

A. No, sir.

Q. Have you any other exhibits, Mr. Fush?

A. I have one exhibit here showing the amount of tonnage in pounds from all points on the F. & G. between Kokomo and Fernwood during the reparation period.

279 Q. That is, on which this arbitrary would be applicable?

A. Yes, sir. I will introduce that as Exhibit No. 25.

(The document was thereupon received in evidence, marked "Defendants' Exhibit No. 25, Witness Fush," and is forwarded herewith.)

Q. (By Mr. GREEN.) Is there anything else you wish to say, Mr. Fush?

A. No; I think I have said enough.

Cross-examination:

Q. (By Mr. PALMER.) Mr. Fush, this last Exhibit No. 25, without going into the figures in detail, shows that the Swift Lumber Company is the largest individual shipper located on your line. In other words, it shows from July 2, 1917, to July 2, 1919, that it shipped 65,000,000-odd pounds out of a total of 109,000,000 pounds. Isn't that correct?

A. That is correct.

Q. In Exhibit No. 19 you have estimated what effect the exclusion of your 2 cents plus charge would have up to the end of your operating period in 1931. That is based on the theory that the local tonnage would be the same as it is at present?

A. Yes: I went four years back and used an average, which is the usual way in preparing exhibits into the future; go back into the past.

280 Q. Then, if the Swift Lumber Company should cut out before that time and you lost that important volume of tonnage, you would be operating at a loss anyhow, apparently, would you not?

A. To a certain extent; yes.

Q. This period to June 30, 1931, you selected because that is the probable life of the operation of your principal shipper, the Fernwood Lumber Company?

A. I took the statement of the Fernwood Lumber Company, which they claimed to be ten years, and I extended it to twelve years, so if there would be any lap over it would be taken in.

Exam. SMITH. Does not that period also cover the term of your bonds?

The WITNESS. Yes, sir.

Exam. SMITH. Your bonds fall due within that period, do they not? About 1930, isn't it?

The WITNESS. 1934.

Q. (By Mr. Palmer.) That traffic is logs—that is, the shipments you get from the Fernwood Lumber Company—is it not?

A. It will be less after ten years.

Q. No. I say it is logs, is it not?

A. No; it is shown there as lumber entirely. I might say
281 that we handle logs for the Fernwood Lumber Company, and also handle lumber. In fact, we handle anything anybody wants to ship or to handle.

Q. They log their material over your line, the Fernwood & Gulf, do they not?

A. Everything moves, yes, as far as forest products are concerned. Of course we don't handle all freight.

Q. Is that log movement for the Fernwood Lumber Company's mill included in this statement of tonnage in your Exhibit No. 25?

A. No, sir. That does not include any Fernwood Lumber Company at all. That is just outside, like I made the statement between Fernwood and Kokomo.

Q. Then with the exception of the timbers, say, of the Swift Lumber Company and these other small operations, or their reduction to a minimum, the principal support of the Fernwood & Gulf would come, would it not, from the logging of the Fernwood Lumber Company? That would be its principal traffic?

A. Logging?

Q. Yes.

A. Not necessarily; no. We would have lumber from other shippers. In fact, there is one shipper going to open up around near Barto there, that may well offset what Swift ships from Knoxo. And there is hardwood there around the Bogue Chitto River;
282 perhaps you are familiar with it.

Q. So, then, you are figuring on other lumber traffic developments?

A. Yes, sir; he has close to 10,000,000 feet.

Mr. PALMER. If one of the shippers that holds 85 per cent of the tonnage will be cut out in ten years, we will assume that that 10,000,000 feet between now and ten years from now ought to be removed. I believe that is all.

(Witness excused.)

Mr. GREEN. Your honor, there is just one more witness, Mr. McElroy, whose testimony I wanted to offer, but what he would swear to is substantially what Mr. Sheppard would testify to as to this situation. I do not want to consume any more time. He is here to say that that would be the fact substantially, and I don't know whether it is necessary to introduce him or not.

Exam. SMITH. Mr. Palmer, have you any objection to conceding that Mr. McElroy would testify substantially along the line that Mr. Sheppard has already testified?

Mr. PALMER. Not the least in the world. I am satisfied he would.

T. J. QUIGLEY was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

283 Q. (By Mr. GREEN.) Name, age, residence, occupation, please, sir.

A. T. J. Quigley; 36; residence, McComb, Mississippi; superintendent for the Illinois Central.

Q. How long have you been a railroad man, Mr. Quigley?

A. Since 1905.

Q. Are you competent to testify to the facts I am going to ask about with reference to the Fernwood & Gulf?

A. I think so.

Q. Have you been over the Fernwood & Gulf recently, Mr. Quigley?

A. Yes, sir.

Q. Please state the cause for your visit.

A. I went over there with a view of familiarizing myself more particularly with the conditions which existed along that line, as to the future prospect of the railroad and the available tonnage along the railroad, and also to get some idea as to the physical condition of the railroad, the operating conditions.

Q. From your investigation, just tell us in your own way what you found.

A. The Fernwood & Gulf Railroad is essentially a lumber railroad, very similar to a number of others in that country which de-
rive practically all of their tonnage from a log movement to
284 some principal mill located on the line. So far as I could determine, with the completion of the log cut, both the hardwood, which lies in a few river bottoms and slashes along the line, and the pine timber, there will not be 10 per cent of the available contributing country subject to development within a very extended period, so far as I could see.

My estimate of the maximum tonnage possible, with the logs removed, would be not to exceed $20,000 per year for revenues, which, in my opinion, would be very much less than the operating expenses, aside from the maintenance. The road is not being maintained to the standard that it should be, both in the tie and bridge conditions. Their rail condition is fair and, so far as I could see, would be suitable for second-hand relay rails if the road was taken up at the time of the ceasing of the log operations. With the exception of the rail and a few locomotives there would be no junk value in the property.

Q. Have there been any demises recently down there of lumber railroads like this?

A. Yes, sir.

Q. Rather disastrous?

A. Yes, sir. I am now operating a twenty-mile line in which in operating expenses alone we are losing about $1,500 a
285 month. That is our line from Brookhaven to Monticello.

Q. What road used to be just north of this road?

A. The Liberty White.

Q. Where has it gone?

A. It has been junked. The east end is junked and the west end is still in operation, I understand, by the action of some residents of Liberty, who put up the deficiency to enable them to haul their cotton out.

Q. Is it run regularly as a railroad or just now and then?

A. Their success in continuous operation has not been very good.

Q. About how often a week do they run?

A. I couldn't say. They try to run every day, but they do not make it.

Q. Now, the road right below there?

A. The Kentwood & Eastern?

Q. Yes; the part where the timber was cut out; what happened to it?

A. They took up the narrow-gauge line on the K. & E., due to the fact that there was no timber, and they were having a big loss in their operation.

Q. Those are, then, gathered unto their fathers?

A. Yes, sir.

Mr. GREEN. That is all.

286 Exam. SMITH. Any questions, Mr. Palmer?

Mr. PALMER. No.

Exam. SMITH. You are excused.

(Witness excused.)

Mr. GREEN. That is all so far as the Fernwood & Gulf is concerned, your honor.

Exam. SMITH. Anything further?

Mr. HUMBURG. Nothing further from us.

Mr. PALMER. There is just one little loose end that I want to ask Mr. Sheppard about. Did you say in your testimony, Mr. Sheppard, that those three roads up north, I think the Sardis & Delta, the Kosciusko & Southeastern—and what was the third one?

Mr. SHEPPARD. The Batesville & Southwestern.

Mr. PALMER. The Batesville & Southwestern, yes; the lumber business on those lines is hardwood?

Mr. SHEPPARD. No, the Sardis & Delta and the Batesville & Southwestern are hardwood roads, and the Kosciusko & Southeastern is practically all pine.

Mr. PALMER. That is what I wanted to get at.

Exam. SMITH. Have you anything further, Mr. Palmer?

Mr. PALMER. There is another loose end I might mention. In that list I made, of mills on the roads in this territory, I said it was

made from the Red Book. There is one little explanation I
287 might make there; it does show two or three mills as located on the Kentwood & Eastern, but they were on the narrow gauge line that was torn up, and they were not taken out of the book, so that if anybody goes to check me up on that he will find an apparent discrepancy, and I wanted to make that explanation.

Exam. SMITH. I doubt if anybody is going to charge you with intentional misrepresentation. Does that conclude this case, gentlemen?

Mr. HUMBURG. That is all, so far as the Federal roads are concerned.

Exam. SMITH. Will there be desire for argument before the commission?

Mr. HUMBURG. That depends somewhat upon the nature of the tentative report.

Exam. SMITH. I doubt if the report can satisfy all parties.

(A discussion followed off the record.)

Exam. SMITH. The record may show that briefs for all parties will be due February 1st; that oral argument is requested; 90 minutes in all. With that understanding gentlemen, the hearing is closed.

(Whereupon, at 11 o'clock a. m., December 19, 1919, the hearing in the above entitled matter was closed.)

289 *Exhibit E to bill of complaint.*

Interstate Commerce Commission.

Mailed by Interstate Commerce Commission March 29, 1920.

SWIFT LUMBER COMPANY
vs.
FERNWOOD & GULF RAILROAD COMPANY, DIRECTOR GENERAL, et al. } No. 10827.

It is proposed that the commission find:

That for the future rates on lumber from Knoxo, Miss., a local point on a short line, the Fernwood & Gulf Railroad, to interstate destinations which exceed rates from Fernwood and Tylertown, Miss., the junction points of the short line with main line carriers, by more than 2½ cents per 100 pounds will be unreasonable and will subject Knoxo to undue prejudice and disadvantage.

L. Palmer for complainant.
Green & Green for Fernwood & Gulf Railroad Company.
George B. Auburtin for New Orleans Great Northern Railroad.
A. P. Humburg and J. L. Sheppard for defendants.

REPORT PROPOSED BY J. EDGAR SMITH, EXAMINER.

Complainant corporation, engaged in the manufacture of lumber at Knoxo, Miss., ships its product over the Fernwood & Gulf Railroad to various interstate destinations reached by trunk line connections of that carrier. By complaint filed July 2, 1919, it alleges that the rates on yellow-pine lumber from Knoxo to points in Louisiana and to points in certain States to the north and east of Mississippi are unreasonable and unjust; and that these rates, as compared with rates on the same commodity from competing points in the territory surrounding Knoxo, are in violation of sections 1, 2, and 3 of the interstate commerce act. Reparation is asked. Rates are stated herein in cents per 100 pounds.

At the hearing the allegations concerning rates to points in Louisiana were abandoned and the evidence was directed to rates to Ohio River crossings, to points to which rates are made in relation to the rates to those crossings, and to rates to points south of the Ohio and Potomac Rivers.

290 The complaint is based upon the theory that there is, or should be, a rate blanket on yellow pine lumber from all lumber producing points south of the Alabama & Vicksburg Railroad and east of the Mississippi River for about 200 miles; that a group adjustment does apply from most of the producing points in said territory; and that Knoxo, and a few other points, are subjected to undue prejudice in that the rates from Knoxo, and from these other points, exceed the group rates from this territory.

The Fernwood & Gulf Railroad is a single track line of standard gauge, 32 miles long, which extends northeasterly from a connection with the Illinois Central Railroad at Fernwood and lies wholly within the State of Mississippi. Knoxo is 27 miles from Fernwood. At Tylertown, a point 6 miles west of Knoxo, the Fernwood & Gulf connects with a branch of the New Orleans Great Northern Railroad. Fernwood and Tylertown are the only junction points which the Fernwood & Gulf now has with other carriers; but the line is extending to the east and is expected to cross the main line of the New Orleans Great Northern near Foxworth and to connect with the Gulf & Ship Island near Columbia. Prior to 1908, the only trunk line connection of the Fernwood & Gulf was the Illinois Central; and prior to May 21, 1906, rates from all points on its line to all points of destination were made by adding its full local rates to Fernwood to the rates from that point to destinations. Effective that date, rates were published from local points on the Fernwood & Gulf via Fernwood which were 2 cents higher than rates from Fernwood, and this is the present basis for joint rates. Rates from Fernwood and from Tylertown via the Fernwood & Gulf do not exceed rates from those points by way of the Illinois Central or via the New Orleans Great Northern Railroad.

291 The real ground of complaint is that rates from Knoxo exceed rates from Fernwood, and therein only does complainant claim that they are unreasonable and unjust; and it is this excess

which complainant says makes the rates from Knoxo, as compared with rates from near-by competing points, unduly prejudicial to it. Throughout this territory rates to Ohio River crossings from all main or trunk line stations are the same as the rates from Fernwood. The questions presented here are substantially these: (1) May rates from stations served only by short lines of railroad exceed the group or territorial rates, and, if so, (2) by what amount? There is no allegation that the rates on yellow pine lumber from trunk line stations in this territory are unreasonable or otherwise in violation of the act.

Ever since 1905, the commission has been duly advised concerning the practices of trunk line carriers in making rates from this territory. In Central Yellow Pine Asso. v. Illinois C. R. Co. et al., 10 I. C. C. 505, 515, the commission in speaking of the particular territory here involved said:

The mills east of the Mississippi located on the lines of defendants have logging roads as well as those west of the Mississippi. The defendants as a rule, however, make no tap line allowances to those mills. The only exception is the Mobile & Ohio road, which does grant such allowance to about four mills located on its line. The new Orleans & Northwestern road has from time to time, beginning with June 28, 1897, put in a tap line allowance of 2 cents per hundred pounds, but the other roads east of the Mississippi objected, and those allowances were withdrawn.

The decision in that proceeding depended in part upon the fact set forth above; that is, that tap line allowances are exceptions to the general practice of carriers east of the Mississippi River, although the carriers west of the river generally made such allowances; and this practice east of the river the commission did not condemn. Nor has the commission condemned rates from points served by short or tap lines in this territory which are made by adding small arbitrataries to the rate from the junction point on
292 main lines. This latter matter was considered in 1914 in the Tap Line case, 31 I. C. C. 490, to which the Fernwood & Gulf Railroad Company was a party. The commission therein said:

With respect to each of the tap lines that are parties to this proceeding, the original orders of the commission and the orders subsequently entered, so far as they relate to through routes, joint rates, and divisions, will be vacated and set aside; and upon the facts of record, we conclude and find that all through routes and joint rates in effect prior to May 1, 1912, between the trunk lines and tap lines named on the record, should be restored and reestablished, and that the divisions out of the through rate on interstate shipments of lumber and forest products, from points on such of these tap lines as file tariffs and have otherwise complied with our accounting rules, etc., should not exceed the following maximum amounts: * * * on shipments from points * * * over 20 miles and not more than 30 miles from the junction, 3 cents per 100 pounds. * * * These divisions are the net amounts that they may be paid out of

the trunk line rates from the junctions, and when the rates from points on the tap line are made by the addition of an arbitrary, such arbitrary shall accrue to the tap line.

Joint rates from all points on the Fernwood & Gulf, except Fernwood & Tylertown, exceed rates from Fernwood & Tylertown by 2 cents or by 2½ cents; these arbitraries accrue to the Fernwood and Gulf and in addition thereto it receives divisions out of the joint rates of 2 cents. This adjustment is within the findings made by the commission in the Tap Line case and the lower rates from Fernwood and from Tylertown were approved by fourth section Order No. 2754, of July 30, 1913, issued on petition of the Illinois Central, the New Orleans Great Northern, and the lines serving this lumber-producing territory. The Fernwood & Gulf was a party to that proceeding. In that order the commission said:

That the petitioners herein be, and they are hereby, authorized on behalf of certain smaller roads named in said applications, which are referred to and hereby made a part hereof, to continue to meet via said smaller roads, the rates of trunk line connections from the junctions points with said trunk lines to Ohio River crossings and Memphis Tenn., and to maintain rates from their local stations intermediate to said junction points that are higher than the rates
293 from the said junction points, provided that the present differences between the rates from said junction points and said intermediate points are not made greater, and to deliver traffic originating at any of the local stations on the said smaller lines to any of their trunk line connections, at any of the trunk line junction points.

The Illinois Central and Yazoo & Mississippi Valley railroads connect with 8 short line carriers in this territory, to no one of which do they extend the junction joint, or group, basis of rates on lumber. Lumber rates from local points on these short lines exceed the rates from the junction points by arbitraries varying from 1 to 4½ cents. The New Orleans Great Northern has no tap-line connections other than the Fernwood & Gulf and the Natchez, Columbia & Mobile. Its rate practices are not different from those set forth above; indeed the general practice throughout the Mississippi Valley and the Southeast appears to be to make rates from local points on tap lines by adding an arbitrary or differential to the rate from the junction point. There are 95 short lines of road in the territory east of the Mississippi and south of the Ohio River. Rates on lumber from local points on these roads are made on the differential or arbitrary basis from 55 short lines, on combinations of locals from 27, and on the junction point basis from only 13.

Rates on lumber from local points on the Fernwood & Gulf are made in substantially the same way that rates on all classes and commodities to and from such local points are made. That is to say, the rates on all classes and commodities to and from local points on the Fernwood & Gulf are higher than the rates to and from junction points such as Fernwood and Tylertown. This

general basis for rate-making to such points was in existence long before complainant established its mill at Knoxo in 1912. Indeed, complainant was well advised of the rate situation when it established its mill at Knoxo rather than at Tylertown, or some
294 other stations, on the New Orleans Great Northern; and the record indicates that in view of the rate situation at Knoxo its stumpage cost it less than would have been demanded at a main-line station.

Complainant has no affiliation with the lumber interests which control the Fernwood & Gulf; it has, however, a logging road of its own about 12 miles long. It alleges that from local stations on tap lines in this territory, the rates on lumber are the same as from junction points, and cites rates from local points on the Mississippi Central as illustrative of this. The New Orleans Great Northern and Illinois Central show that the Mississippi Central is now a carrier handling traffic other than lumber; that it built westward from Hattiesburg, where it connects with the New Orleans and Northeastern, crossing the lines of the Gulf and Ship Island before it reached their own rails at Wanilla and Brookhaven; that it had joint rates via the New Orleans & Northeastern and Gulf & Ship Island at the time connection was made with their lines; and that if they expected to handle traffic originating on that road their rates could not exceed the rates already in effect via the lines of their competitors. The complaint also alleges that the group or trunk-line basis of rates is applied from points on other short lines in this territory; from the Alabama & Mississippi Railroad, the Mississippi and Western Railroad, the Cybur, Gulf & Northwestern Railroad, and the Pearl River Valley Railroad. The Alabama & Mississippi extends from Pascagoula, served also by the Louisville & Nashville; through Evanston, where it crosses the Gulf, Mobile & Northern; to Vinegar Bend, where it connects with the Mobile & Ohio. The Mississippi and Western is a short line which connects with the Gulf, Mobile & Northern at Stevens. The Cybur, Gulf & Northern no longer exists; a part of its line is now owned by the Pearl River Valley, connecting with the New Orleans & Northeastern at Picayune. It is to be observed that none of these roads con-
295 nects with either the Illinois Central or the New Orleans Great Northern. The fact that the Illinois Central and New Orleans Great Northern concur in joint rates from points on these short lines, with which they have no direct connection, is urged by complainant as an unjust discrimination against Knoxo and as subjecting that point to undue prejudice and disadvantage. The joint rates from these short lines are made by the longer lines with which they connect and are the same as the group rates from points on such longer lines; unless the Illinois Central and the New Orleans Great Northern are free to cancel all through rates with such longer lines

they are unable to dictate to them what policy they must pursue with respect to rates from their connecting short lines. There is discrimination in such an adjustment, but it is far from unjust; there is advantage to points on such short lines, but it was not created or given by the Illinois Central or the New Orleans Great Northern and the disadvantage to Knoxo is not undue.

The record discloses that complainant established its mill for the purpose of producing lumber for export; that it located at Knoxo because of the expectation that the Fernwood & Gulf, by building to Columbia, would form a junction with the Gulf & Ship Island and thereby obtain access to Gulfport. Due to the war, complainant has, in recent years, shipped most of its lumber to points within the United States.

Defendants offer testimony tending to show that the rates from Knoxo are not unreasonable as compared with rates from other points in the South for similar distances, or as compared with the rates on lumber for similar distances in Central Freight Association territory. The Illinois Central shows that it has made rates with the Fernwood & Gulf consistent with its established policy; that its rates made in connection with the Fernwood & Gulf from points on that line were made in strict compliance with the de-
296 cisions, orders, and rules of this commission; and that it can not afford, even if the commission should permit it, to shrink its earnings by allowing larger divisions to the Fernwood & Gulf. The Fernwood & Gulf shows that its operation has been at a loss which would become much greater if rates on lumber from local points on its line should be reduced below their present level, lumber supplying 93 per cent of its total traffic.

Complainant attempted to show that while the Illinois Central and New Orleans Great Northern maintain rates on lumber from short line connections on the basis of arbitraries over the rates from junction points, such rates are largely paper rates because no lumber industries are now located on such lines. This attempt fell in the making, for the facts are that even on those short lines where the timber has been cut to such an extent that the large lumber industries have been abandoned, smaller portable mills are in operation, and ties, piling, and other articles taking the lumber rates are shipped in considerable volume. The Fernwood & Gulf has forest products shipped from its line by the lumber mill with which it is affiliated, by complainant, and by others.

Complainant cites certain decisions of the commission in support of its position: Ladd & Co. v. Gould Southwestern Ry. Co., 36 I. C. C. 179; Lutcher & Moore Lumber Co. v. T. & N. O. R. R. Co., 42 I. C. C. 88; Cybur Lumber Co. v. N. O. & N. E. R. R. Co., 43 I. C. C. 268; McGowan-Foshee Lumber Co. v. F. A. & G. R. R. Co., 43 I. C. C. 581; Pacific Lumber Co. v. N. W. P. R. R. Co., 51 I. C. C.

738; Three Lakes Lumber Co. v. N .W. Ry. Co., 52 I. C. C. 42; and Lodowick Lumber Co. v. Director General, 53 I. C. C. 218. All of these decisions except those in the Cybur and McGowan-Foshee cases deal with group relationships west of the Mississippi River. The doctrine laid down with respect to the yellow pine group west of the river was clearly stated in the Ladd case:

297 * * * The territory in which the Gould Southwestern is located is one in which blanket rates as a rule prevail. The carriers making effective such a blanket rate can not be heard to say that it is applicable in general but not applicable from points on a short-line common carrier, such as the Gould-Southwestern. If this territory is to be blanketed, and the blanket rate is to be applied without discrimination, the Iron Mountain must expect to apply the blanket rate from points on short-line common carriers connecting with the Iron Mountain.

The general rule of decision, as applied to west coast groups, was likewise distinctly set forth in the Pacific Lumber case:

* * * The Southern Pacific and Santa Fe had followed a rather consistent policy, virtual, if inarticulate, in extending the coast group basis of rates to all points located fairly within the general geographic and distance limits of the blanket and producing lumber and other forest products in substantial volume, whether such points were served by their own main lines or branch lines or by lines of independent common-carrier roads with which they had direct connection.

No such rule, no such policy, ever existed in the central yellow-pine territory. Rates from this territory are grouped, but not blanketed. The consistent practice of the Illinois Central, with respect to rates from this territory, has been known to the commission for more than fifteen years and has never been condemned. The carriers mainly responsible for departures from this general practice, the Mobile & Ohio and the New Orleans & Northeastern, have likewise been known to the commission for the same length of time. Indeed, the Cybur case was primarily against the New Orleans and Northeastern and was based upon the fact that to Ohio River crossings joint rates the same as applied from junction points were in effect from local points on the tap line, the Cybur, Gulf, and Northwestern, whereas to other points no joint rates were made.

In the McGowan-Foshee case the commission stated that "the Louisville and Nashville applies the blanket basis from points on its own branch lines, many of which are farther removed from the destinations in issue than is Falco"; and found concerning

298 the rates from that point, on the short connecting line, that "for the future they will be unduly prejudicial to complainant to the extent to which they exceed, the blanket basis of rates from Galliver to the same destinations." Galliver is the junction point be-

tween the short line and the Louisville & Nashville. Nevertheless, the commission did not find rates from Falco 2 cents higher than from Galliver to be unreasonable.

The facts in this proceeding show that the Illinois Central makes rates with all short line connections upon bases similar to that it uses to make rates with the Fernwood & Gulf, and there is no showing of unjust discrimination or undue prejudice resulting to complainant therefrom.

The complaint points out that to certain destinations there are no joint rates from Knoxo, but that through rates are made on combination of locals based on Fernwood or Tylertown. There is no specific prayer for joint rates. The lumber arbitrary over the group rates was formerly 2 cents; this is the adjustment now in rates to Ohio River crossings and beyond; to Memphis, Tenn., to New Orleans, La., and to some points south of the Ohio River this arbitrary has been increased to 2½ cents in accordance with General Order No. 28; nevertheless the record shows that to other points south of the Ohio and Potomac Rivers through rates are made upon the sums of the locals and the differences between the rates from the junction points and from Knoxo are greater than 2½ cents. For instance, to Nashville, Tenn., the rate from Knoxo, based on Fernwood, is 25½ cents, via Tylertown it is 23½ cents, from Fernwood & Tylertown the rates are 19 cents; to Knoxville, Tenn., from Knoxo, via Fernwood, it is 28 cents, via Tylertown 26 cents, from Fernwood and Tylertown, 21½ cents; to High Point, N. C., the rate via Fernwood is 37½ cents, from Fernwood 31 cents. The explanation offered on behalf of defendants is undoubtedly true; that is, that these destinations are served by near-by territories of production and,
299 the movement from points on the Fernwood & Gulf to such points being small, no joint rates are published. Complainant, however, is entitled to reasonable rates without regard to the method of publication or of making, and to add the full locals or hauls such as indicated above is clearly unreasonable.

The commission should find that the rates on yellow pine lumber from Knoxo, Miss., to the Ohio River crossings and to points basing thereon which exceed rates from Fernwood and Tylertown, Miss., by 2 cents per 100 pounds are neither unreasonable, unjustly discriminatory, nor unduly prejudicial to complainant; that rates on lumber from Knoxo to points south of the Ohio and Potomac Rivers which exceed rates from the junction points by 2½ cents are not unreasonable or otherwise in violation of the act; and that for the future any rates on lumber from Knoxo to other interstate destinations which exceed rates from the junction points by more than 2½ cents per 100 pounds will be unreasonable and will subject Knoxo to undue prejudice and disadvantage. Reparation should be denied.

300 *Exhibit I to bill of complaint.*

Interstate Commerce Commission.

SWIFT LUMBER COMPANY
v.
FERNWOOD & GULF RAILROAD COMPANY, DIRECTOR GENERAL, AS AGENT, ET AL. } No. 10827.

Submitted May 15, 1920. Decided April 5, 1921.

Rates on yellow-pine lumber, timber, and lumber products from Knoxo, Miss., a local point on the Fernwood, Columbia & Gulf Railroad, found unduly prejudicial to the extent they exceeded and exceed the blanket basis of rates applicable from the junction of the Fernwood, Columbia & Gulf with the Illinois Central Railroad. Rates not found unreasonable except to certain points in Tennessee. Reparation denied.

L. Palmer for complainant.
Green & Green for Fernwood & Gulf Railroad Company.
George B. Auburtin for New Orleans Great Northern Railroad Company.
A. P. Humburg and J. L. Sheppard for defendants.

REPORT OF THE COMMISSION.

EASTMAN, Commissioner:

Complainant, a corporation engaged in the manufacture of lumber and lumber products at Knoxo, Miss., ships its product over the Fernwood, Columbia & Gulf Railroad, formerly the Fernwood & Gulf, to various interstate destinations reached by trunk line connections of that carrier. By complaint, filed July 2, 1919, it alleges that the carload rates on yellow-pine lumber, timber, and lumber products to points in Louisiana, Tennessee, Kentucky, Wisconsin, Minnesota, Iowa, and Missouri, and to points in central and eastern trunk line territories have been and are unreasonable and unjust; and that these rates, as compared with rates on the same commodities from competing points in the territory surrounding Knoxo, have been and are in violation of sections 1, 2, and 3 of the act to regulate commerce. Reparation is asked on shipments made since January 1, 1919. Rates are stated herein in cents per 100 pounds, and do not include the general increase authorized by us on July 29, 1920.

At the hearing the allegations concerning rates to points in Louisiana were abandoned. Rates to Ohio River crossings are of primary importance, as the rates to points beyond are based upon the Ohio River combination.

301 The complaint rests upon the theory that a rate blanket on yellow-pine lumber covers the territory extending south from the Alabama & Vicksburg to the Gulf and east from the Mis-

sissippi River for a distance of about 200 miles, and that Knoxo and a few other points located within this territory are subjected to undue prejudice because their rates exceed the blanket rates.

At the time of the hearing the Fernwood & Gulf, a single-track line of standard gauge, extended from a connection with the Illinois Central at Fernwood, Miss., eastwardly for 32 miles. Knoxo is 27 miles from Fernwood. At Tylertown, a point 6 miles west of Knoxo, there is a connection with a branch of the New Orleans Great Northern. Fernwood and Tylertown were the only junction points with other carriers at the time of the hearing, but the line has since been extended 12 miles eastwardly through Foxworth, Miss., where it connects with the main line of the New Orleans Great Northern, to a connection with the Gulf & Ship Island at Columbia, Miss. It is now known as the Fernwood, Columbia & Gulf, but will be referred to hereinafter as the Fernwood & Gulf.

The Fernwood & Gulf was formerly owned by the Fernwood Lumber Company, but upon the complete separation of the lumber company and the railroad company we entered an order on December 21, 1914, vacating our orders in the Tap Line case, 23 I. C. C. 277, 549, 31 I. C. C. 490, in so far as they related to the Fernwood & Gulf, and dismissed it from that proceeding.

Prior to 1908 the only trunk line connection of the Fernwood & Gulf was the Illinois Central, and prior to May 21, 1906, lumber rates from all points on its line to all destinations were made by combining its full local rates to Fernwood with the rates beyond. Effective on that date, rates were published from local points which were 2 cents higher than the rates from Fernwood, and this is the present basis for joint rates to Ohio River crossings and points beyond. To Memphis, Tenn., New Orleans, La., and some other points south of the Ohio River, this arbitrary has been increased to 2.5 cents in accordance with General Order No. 28 of the Director General of Railroads. To certain points in Tennessee there are no joint rates from Knoxo and the applicable combination rates, based on Fernwood, exceed the junction-point rates by more than 2.5 cents. Rates from Fernwood and Tylertown via the Fernwood & Gulf do not exceed the respective rates from those points by way of the Illinois Central or the New Orleans Great Northern. The arbitraries over the junction-point rates accrue to the Fernwood & Gulf and in addition it receives a division of 2 cents per 100 pounds out of the joint rates.

302 It is not and has not been the practice of defendants Illinois Central and New Orleans Great Northern to extend the junction-point, or blanket, basis of rates on lumber to points on short-line railroads in this territory. The Illinois Central and its affiliated line, the Yazoo & Mississippi Valley, connect with eight such short-line carriers and none of them has the blanket rates. Lumber rates from local points on these short lines exceed the rates from the junction points by arbitraries ranging from 1 to 4.5 cents. The New Orleans Great Northern has no short-line connections other

than the Fernwood & Gulf and the Natchez, Columbia & Mobile, and to neither does it extend the blanket rates. Indeed, the general, although not the universal, practice throughout the Southwest appears to be to make rates from local points on independent short lines by adding an arbitrary to the rate from the junction point. There are 95 such carriers in the territory east of the Mississippi and south of the Ohio referred to in this record, and rates on lumber from local points on these roads are made on the arbitrary basis in 55 cases, on combinations of locals in 27, and on the junction-point or blanket basis in but 13.

Complainant states that from local stations on certain short lines in this territory the rates on lumber are the same as from the junction points, and mentions rates from such points on the Mississippi Central, the Alabama & Mississippi, the Mississippi & Western, the Cybur, Gulf & Northwestern, and the Pearl River Valley.

Defendants New Orleans Great Northern and Illinois Central show that the Mississippi Central is now 160 miles in length; that it handles considerable traffic other than lumber; that it had joint rates on the junction-point basis with the New Orleans & Northeastern prior to the establishment of connections with the New Orleans Great Northern at Wanilla, Miss., and with the Illinois Central at Brookhaven, Miss.; and that they were forced to extend the blanket rates to it because of this competition.

The Alabama & Mississippi extends from Pascagoula, Miss., served also by the Louisville & Nashville, through Evanston, Miss., where it crosses the Gulf, Mobile & Northern, to Vinegar Bend, Ala., where it connects with the Mobile & Ohio. The Mississippi & Western is a short line which connects with the Gulf, Mobile & Northern at Stevens, Miss. The Cybur, Gulf & Northern no longer exists. A part of its line is now owned by the Pearl River Valley, connecting with the New Orleans & Northeastern at Picayune, Miss. It is to be observed that none of these roads connects with either the Illinois Central or the New Orleans Great Northern, yet both these defendants concur in joint rates on the blanket basis from local
303 points on these short lines. It appears, however, that if the Illinois Central and the New Orleans Great Northern should refuse to concur in these joint rates, similar rates would still apply to most destinations via other routes.

Practically all of the yellow-pine production on the Illinois Central and the affiliated Yazoo & Mississippi Valley is in the territory south of the line of the Alabama & Vicksburg, and from all points in this territory, both on their main lines and on their branch lines, the Illinois Central and Yazoo & Mississippi Valley blanket their rates on yellow-pine lumber and its products to Ohio River crossings and points taking the same rates; to the territory beyond the Ohio River crossings, including eastern and Virginia cities; and to points in Kentucky and Tennessee on their own lines and on the lines of certain other carriers. Points on the main line and branch lines of the New Orleans Great Northern are similarly blanketed.

The Fernwood & Gulf is well within this blanket territory and nearer to the northern boundary than to the southern. The distances from Knoxo to the destinations involved herein are substantially less than the distances to the same destinations from many shipping points having the blanket rates. For example, from Ponchatoula, La., a lumber-shipping point 49 miles north of New Orleans on the main line of the Illinois Central, the distances are 26 miles greater than from Knoxo. The Illinois Central apparently has no branch lines in the blanketed territory except the short Monticello branch, but from Covington, La., the terminus of a branch of the Yazoo & Mississippi Valley connecting with the main line of the former road at Hammond, La., and with the main line of the latter at Baton Rouge, La., the distances to Memphis, Tenn., through which point most of the traffic with which we are here concerned moves, are 115 miles greater via Baton Rouge and 44 miles greater via Hammond than the corresponding distance from Knoxo. From Woodville, Miss., also on a branch of the Yazoo & Mississippi Valley, the distances are 71 miles greater than from Knoxo. From Folsom, La., a point on a branch line of the New Orleans Great Northern, the distances are 24 miles greater than from Knoxo by way of Tylertown, and 96 miles greater by way of Foxworth. The points above named, from all of which yellow-pine lumber is shipped, are in the extreme southern part of the group and the distance comparisons are given merely to show that Knoxo is well within the blanketed territory.

Defendants submitted evidence tending to show that the rates from Knoxo are not unreasonable as compared with rates for similar distances from points in the South on other short lines, or as compared with the rates on lumber between certain points in central territory for similar distances. In support of its allegation
304 of unreasonableness complainant relies upon the comparison of the Knoxo rates with those from the blanketed points.

The Illinois Central states that it can not afford to shrink its earnings by allowing larger divisions to the Fernwood & Gulf, but in this connection it may be observed that the division accorded by it to the Mississippi Central was 6 cents per 100 pounds at the time of the hearing, and that under our sixth supplemental order in the Tap Line case, supra, a maximum division of 5 cents per 100 pounds may be allowed to a tap-line common carrier on shipments from points over 20 miles and not more than 40 miles from the junction, this being in addition to any arbitrary over the junction-point rate. The Fernwood & Gulf shows that it has operated at a loss, and that the loss would be greater if its revenue on lumber were reduced by the amount of the arbitrary, since lumber supplied 93 per cent of its total traffic.

The material facts in this case are the same as those in McGowan-Foshee Lumber Co. v. F., A. & G. R. R. Co., 43 I. C. C. 581; 51 I. C. C. 317. In that case it was shown that rates on yellow-pine lumber from all points located on the Louisville & Nashville and

other so-called trunk lines and on certain short lines in Louisiana, Mississippi, Alabama, and Florida, between the Mississippi and Chattahoochee Rivers, and between the Gulf of Mexico and a line drawn from Vicksburg, Miss., through Jackson and Meridian, Miss., Selma, Montgomery, and Opelika, Ala., to the Chattahoochee River, were blanketed to Ohio River crossings and to destinations in Kentucky and Tennessee and in central and trunk line territories; that from Falco, Ala., the northern terminus of the Florida, Alabama & Gulf, which connects with the Louisville & Nashville at Galliver, Fla., 26 miles from Falco, joint rates to said destinations were made 2 cents or 3.25 cents over the junction-point, or blanket, rates; that while the distance from Falco to Cincinnati, Ohio, a typical destination point, is slightly greater than the average weighted distance from the Louisville & Nashville blanket points, Falco is well within the limits of the blanket; that there were numerous so-called short lines traversing the blanket territory and connecting with the Louisville & Nashville, to none of which the blanket rates were extended; and that it was the general policy of the Louisville & Nashville to make the rates from points on short lines like the Florida, Alabama & Gulf higher than the rates from the junction points. We found that the rates from Falco were, and since January 1, 1916, had been, unreasonable and unduly prejudicial to complainant to the extent that they exceeded or had exceeded the rates from Galliver by more than 2 cents per 100 pounds, and that for the future they would be unduly prejudicial to complainant to the extent to which they
305 exceeded the blanket basis of rates from Galliver to the same destinations.

The fundamental issue is whether carriers which have equalized rates on lumber to certain destinations from all their main-line and branch-line points, and from points on certain independent short lines as well, which are located within a producing territory of wide extent may, without being guilty of undue prejudice, refuse to extend similar blanket rates to producing points within such territory which are located on other independent short lines. No question is raised as to the propriety or desirability of the blanket already established, but on the contrary it seems to be conceded that it is of general advantage to producers, consumers, and carriers alike. The sole question is whether defendants were and are justified in refusing to extend its benefit to these other short-line points and specifically, in this case, to Knoxo on the line of the Fernwood & Gulf.

Clearly cost of service furnishes no justification for such refusal, for the haul from Knoxo is shorter than the hauls from numerous other points to which the blanket rates apply, and there is no evidence that it is attended by unusual transportation difficulties. As compared with a single-line haul, some slight additional cost is doubtless involved in the separate corporate organization of the Fernwood & Gulf and in its separate billing and accounting expense, but the blanket rates are not now confined to single-line hauls, but apply in many instances to multiple-line routes. Nor will competi-

tion serve as a justification, for the blanket rates apply not only at junction points where competition exists, but as well at all local points on both the main lines and branch lines of defendants.

If neither cost of service nor competition justifies the discrimination, what circumstances are there surrounding points located, like Knoxo, on independent short lines which make it reasonable that they should be excluded from the benefits of the blanket system? It has been suggested that the lumber shipper on the short line may have acquired his stumpage more cheaply by reason of its relative inaccessibility prior to the construction of the short line, or by reason of the difference in rates; but there is no satisfactory evidence as to this and such evidence would obviously be irrelevant and immaterial in the consideration of a rate structure. It is suggested that the independent short lines are likely to be abandoned with the depletion of the timber areas; but this is mere speculation. Branch lines of the larger carriers are at times abandoned for the same reason, and on the other hand independent short lines not infrequently survive as the original lumber industry is superseded by agriculture or other industrial development. Many of the so-called trunk
306 lines in the region in question are made up in part of what were originally lumber roads. It is suggested that the short lines do not furnish their commensurate quota of equipment; but this is a matter to be considered in the fixing of their divisions. Perhaps the most important suggestion is that if the blanket rates are extended to Knoxo it will follow as a necessary consequence that they must be extended to all similar points on other independent short lines, and that the revenues of the trunk lines will thereby be reduced materially. But the protection of revenue goes primarily to the issue of reasonableness and is not sufficient justification for a prejudicial rate adjustment. In the yellow-pine territory west of the Mississippi similar blanket rates have been uniformly extended to all points.

We find nothing of record in this case which warrants a deviation from the conclusions reached in McGowan-Foshee Lumber Co. v. F., A. & G. R. R. Co., supra. We do not find that the rates on yellow-pine lumber, timber, and lumber products in effect subsequent to January 1, 1919, from Knoxo to the destinations in question were intrinsically unreasonable, except that we find that the rates to points in Tennessee, which were made by combination of the local rates to and beyond Fernwood, were unreasonable to the extent that they exceeded the corresponding contemporaneous rates from Fernwood to the same destinations by more than 2.5 cents per 100 pounds. We do find, however, that subsequent to January 1, 1919, the rates on yellow-pine lumber, timber, and lumber products from Knoxo to Ohio River crossings, to points in Wisconsin, Minnesota, Iowa, and Missouri, to points in central and eastern trunk line territories, and to points in Tennessee and Kentucky the rates to which are blanketed from points producing yellow pine on the Illinois Central and New Orleans Great Northern Railroads south of Jackson, Miss.,

were, and that for the future they will be, unduly prejudicial to complainant to the extent that they exceed the blanket basis of rates from Fernwood, Tylertown, and Foxworth.

Complainant has not shown that it was damaged by the undue prejudice. It does not appear that the price which complainant obtained for its lumber was fixed by its competitors located on the Illinois Central, Yazoo & Mississippi Valley, and New Orleans Great Northern. Complainant concedes that it must also meet the competition of lumber producers located west of the Mississippi River. Complainant has shown that it made shipments to points in Tennessee upon which rates made by combination upon Fernwood were applied, but has failed to show that it paid and bore the freight charges thereon. Reparation is accordingly denied.

An appropriate order will be entered.

307 HALL, Commissioner, dissenting in part:

A rate group or blanket is not geographic. It embraces no area. It consists of certain railroad stations from or to which the rates apply. A point not on the railroad does not take those rates even though surrounded by stations that do. If, later, such a point is connected by rail with one of those stations it does not because of that fact become entitled to the group rates. Something more is needed. The connection may be by an independent line, which has had no share in evolving the group rates. It may be by a branch of the trunk line.

We have said in some cases that an arbitary over the junction point was reasonable, and in others unreasonable. In others still, as here, we have said that it was not unreasonable, but was and would be for the future unduly prejudical to the former country point. This has been said of points on independent lines because points on other independent lines were differently treated by the trunk line. It has also been said of branch-line points when points on other branches of the same carrier were differently treated. And it has been said of points on independent lines, because branch-line points of the trunk line were differently treated. Perhaps these decisions can not be reconciled. But such error as may have found lodgment in them seems to have sprung from the conception of a group or blanket as a part of the earth's surface, with defined boundaries.

However convenient this may be as a figure of speech, or in coloring a map, it should not dim our perception of the origin and essential character of "group" rates, or the reasons for their existence. They penetrate a territory, instead of embracing or permeating it, and the right of shippers within that territory to share in them must rest upon the same considerations as determine elsewhere what is unreasonable and what is unduly prejudical. It is easy to carry the doctrine of uniformity beyond the warrant for it.

Group rates find their justification largely in the law of averages. If reasonable for the average haul they may be justified in proper case, even though high for the shortest haul and low for the longest.

But the carriers that established the group did so voluntarily or under stress of competition. We had no power to compel the grouping, and in fixing the average or group rate they took into account the stations and traffic to which that rate was to apply, not other stations then nonexistent or off their rails, not traffic the volume and condition of which were unknown. If other stations must be included the group rate may need revision, and the revision may be upward. It seems unjust that shippers at points already grouped should be exposed to payment of a higher rate, or to exclusion from the group, merely because some off-line point in the vicinity
308 seeks to share in the rate whether or not it shares in the transportation conditions that led to the grouping.

Before we make a finding which may bring about results like these we should have before us a record which clearly establishes such similarity of transportation conditions and surrounding circumstances as will fully warrant it. In my opinion we have not such a record here, and I therefore dissent from the finding of undue prejudice. The complaint should be dismissed.

I am authorized to say that Commissioner Potter joins in this dissent.

DANIELS, Commissioner, dissenting:

Virtually this same issue was involved in McGowan-Foshee Lumber Co. v. F., A. & G. R. R. Co., 43 I. C. C. 581, 51 I. C. C. 317, and in Whitewater Lumber Co. v. A. C. Ry., 53 I. C. C. 278. When a trunk-line carrier over a considerable stretch of its main line carries the same rate on lumber in carloads to a given territory of destination; when, in addition thereto the same rate is carried from the trunk-line carrier's own branches connecting with the main line at points along the blanketed stretch of the main line, why is not a shipper on an independent branch line connecting with the blanketed stretch of the trunk line, when said shipper's freight is carried for distances not in excess of the average haul over the carrier's own branches under the common rate, entitled to the same common or blanket rate?

Under certain circumstances he may be so entitled. If, for example, an extensive blanket like the yellow-pine blanket territory west of the Mississippi River assimilates, under a single rate, hauls that may vary by hundred of miles, and the integrity of the blanket is defended by the carriers and justified by us on grounds of general utility to producers, consumers, and carriers alike, there could generally be no apparent justification for singling out shippers on one particular branch line, either proprietary or independent, and exacting an arbitrary surcharge over the blanket rate from shippers thereon. Ladd & Co. v. Gould Southwestern Ry. Co., 36 I. C. C. 179.

But in the absence of the conditions recited above, the issue may be determined on other grounds.

It is urged with force that the higher rate to the shipper on the independent branch line can not be justified on the ground of a difference in specific cost of service. Where the haul is no longer than from points generally on proprietary branches, the argument from specific cost would seem to support the claim for identity of rates. There will, however, be some additional costs involved in the overhead expense of the separate corporate organization of
309 the independent branch line, and the additional billing and accounting expenses may also properly be considered. McGowan-Foshee Lumber Co. v. F., A. & G. R. R. Co., 51 I. C. C. 317, 322.

There is often urged the commercial argument that the shipper on the independent branch line has bought his stumpage more cheaply by reason of its originally greater inaccessibility to markets. In many cases this is probably true, though when he secures rail connection with the trunk line it does not appear that the price originally paid for stumpage should be any bar to his receiving thereafter a reasonable and nonprejudicial rate.

Where, however, a trunk line has built a branch line, it is a fair presumption that it is the carrier's expectation that the region traversed will permanently require service and permanently offer patronage to justify the service to be rendered. This expectation of permanent patronage may justify a rate adjustment to shippers on the proprietary branch line which can not, with equal reason, be demanded by shippers whose traffic is likely to cease upon the depletion of limited quantities of natural resources such as stands of timber. The removal of timber in some instances results in a discontinuance of paying traffic. We have only recently permitted the entire abandonment of a short line and the abandonment of the greater part of another short line where the removal of timber practically rendered profitable operation impossible. What is originally a logging or mining road may prove to be a pioneer, permanently opening up new country with a steady traffic, or it may prove a commercial venture of exploitation whose operation may cease when the country has been logged over or the mine's profitable deposits have once been removed.

In this aspect of the matter there may be justification for not according the shipper on an independent branch road a blanket rate accorded for hauls of equal length on the carrier's proprietary branches. To insist upon an identity of rates as of right is to insist that some one other than the main-line carrier may determine the chances for permanent railroad operating success in a new field, and compel the main-line carrier to contribute to the success of the venture by according a parity in rates. When the independent road is virtually one in interest with a lumber company, this claimed identity of rates might approximate a forced underwriting by the trunk-line carrier of a new industrial project. Particularly is this consideration enforced by the well-known fact that such independent short-line roads rarely contribute a commensurate supply of equipment toward carrying the freight that originates jointly upon their

lines and the lines of the trunk lines including the latter's branches.

Provisions of adequate equipment and appliances by the trunk
310 line is requisite to handle the freight offered by the short line without there being in all cases any certain or probable warrant that such provision will have permanent and remunerative use.

Nor does it necessarily follow that in every case in which a carrier blankets its main-line points it must also extend the blanket to include its own branch-line points. The carrier's rights and duties in this respect are limited and controlled by the rights of competing shippers located on branch lines extending from the grouped main-line points to enjoy rates which are properly related to the rates applying from the grouped points taken as a whole, and no hard and fast rule can be laid down which would permit or deny a carrier, regardless of the extent to which the main-line points are grouped, arbitrarily to exclude its branch-line points from the group rate.

We have recognized that a carrier may, within proper limits, protect its own business, and that there may be cases in which a carrier should not be required to give to points on an independent connection the same rates to markets that it gives to points on its own branch lines in the same region. That rule is subject to the qualification that the carrier may not so adjust rates on its own lines as unduly to prejudice shippers on other lines or to deprive such shippers of just and reasonable rates merely through a desire to serve shippers on its own lines. Willamette Valley Lumbermen's Asso. v. S. P. Co., 51 I. C. C. 250, 261.

On the basis of the foregoing analysis I do not think that the complainant is entitled to the junction-point rate on lumber.

Commissioner Esch did not participate in the disposition of this case.

311 Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 5th day of April, A. D. 1921.

No. 10827.

Swift Lumber Company

v.

Fernwood & Gulf Railroad Company; James C. Davis, Director General, as Agent; Illinois Central Railroad Company; The Yazoo & Mississippi Valley Railroad Company; New Orleans Great Northern Railroad Company; Gulf, Mobile & Northern Railroad Company; Mobile & Ohio Railroad Company; Southern Railway Company; New Orleans & Northeastern Railroad Company; Alabama Great Southern Railroad Company; The Alabama Northern Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; Alabama & Vicksburg Railway Company; The Atchison, Topeka & Santa Fe Railway Company; Atlantic City

Railroad Company; Ann Arbor Railroad Company; Ashland Coal & Iron Railway Company; Atlantic Coast Line Railroad Company; The Baltimore & Ohio Railroad Company; The Baltimore & Ohio Southwestern Railroad Company; Bessemer & Lake Erie Railway Company; Boston & Albany Railroad Company (The New York Central Railroad Company, lessee); Boston & Maine Railroad and J. H. Hustis, temporary receiver; Buffalo & Susquehanna Railroad Corporation; Buffalo, Rochester & Pittsburgh Railway Company; Central Indiana Railway Company; Central New England Railway Company; The Central Railroad Company of New Jersey; Central Vermont Railway Company; The Chesapeake & Ohio Railway Company; The Chesapeake & Ohio Railway Company of Indiana; The Chicago & Alton Railroad Company; Chicago & Eastern Illinois Railroad Company and Thomas D. Heed, receiver; Chicago & North Western Railway Company; Chicago Great Western Railroad Company; Chicago, Indianapolis & Louisville Railway Company; Chicago Junction Railway Company; Chicago, Kalamazoo & Saginaw Railway Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago, Milwaukee & Gary Railway Company; Chicago, Peoria & St. Louis Railroad Company and Bluford Wilson and Wm. Cotter, receivers; Chicago, St. Paul, Minneapolis & Omaha Railway Company; Chicago, Terre Haute & Southeastern Railway Company; The Chicago, Rock Island & Pacific Railway Company; The Cincinnati, Lebanon & Northern Railway Company; The Cincinnati Northern Railroad Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Coal & Coke Railway Company; Cumberland & Pennsylvania Railroad Company; The Cumberland Valley Railroad Company; The Cincinnati, Indianapolis & Western Railroad Company; Chicago, Burlington & Quincy Railroad Company; The Delaware & Hudson Company; The Delaware, Lackawanna & Western Railroad Company; Detroit & Toledo Shore Line Railroad Company; Detroit, Toledo & Ironton Railroad Company; The Duluth, South Shore & At-
312 lantic Railway Company; Detroit & Mackinac Railway Company; Detroit, Bay City & Western Railroad Company; Elgin, Joliet & Eastern Railway Company; Erie Railroad Company; Evansville & Indianapolis Railroad; Fort Dodge, Des Moines & Southern Railroad Company; The Gettysburg & Harrisburg Railway Company; Grand Trunk Western Railway Company; Grand Rapids & Indiana Railway Company; The Great Northern Railway Company; Greenwich & Johnsonville Railway Company; The Hocking Valley Railway Company; Indiana Harbor Belt Railroad Company; The Interstate Railway Company; The Kanawha & Michigan Railway Company; Kewaunee, Green Bay & Western Railroad Company; Kentucky & Indiana Terminal Railroad Company; The Lake Erie & Western Railroad Company; The Lehigh & Hudson River Railway Company; Lehigh & New

England Railroad Company; Lehigh Valley Railroad Company; The Long Island Railroad Company; Little Kanawha Railroad Company; Louisville & Nashville Railroad Company; Louisville, Henderson & St. Louis Railway Company; Litchfield & Madison Railway Company; The Lorain, Ashland & Southern Railroad Company; Maine Central Railroad Company; Maryland, Delaware & Virginia Railway Company; The Michigan Central Railroad Company; Mineral Range Railroad Company; The Minneapolis & St. Louis Railroad Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Missouri Pacific Railroad Company; The Monongahela Railway Company; Montpelier & Wells River Railroad; Nashville, Chattanooga & St. Louis Railway; New Jersey & New York Railroad Company; The New York Central Railroad Company; The New York, Chicago & St. Louis Railroad Company; The New York, New Haven & Hartford Railroad Company; New York, Ontario & Western Railway Company; New York, Philadelphia & Norfolk Railroad Company; New York, Susquehanna & Western Railroad Company; Norfolk Southern Railway Company; Norfolk & Western Railway Company; The Northern Ohio Railway Company; Northern Pacific Railway Company; The Pennsylvania Railroad Company; The Pennsylvania Railroad Company, Western Lines; Pere Marquette Railway Company; Philadelphia & Reading Railway Company; The Philadelphia, Newton & New York Railroad Company; The Pittsburgh & Lake Erie Railroad Company; Pittsburgh, Chartiers & Youghiogheny Railway Company; The Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company; Peoria Railway Terminal Company; Pontiac, Oxford & Northern Railroad Company; Richmond, Fredericksburg & Potomac Railroad Company; Rutland Railroad Company; St. Johnsbury & Lake Champlain Railroad Company; St. Louis-San Francisco Railway Company; St. Louis Southwestern Railway Company; Schoharie Valley Railway Company; Stony Creek Railroad Company; Susquehanna & New York Railroad Company; Seaboard Air Line Railway Company; Tennessee Central Railroad Company and W. K. McAllister, receiver; The Toledo & Ohio Central Railway Company; Toledo, Peoria & Western Railway Company and E. N. Armstrong, receiver; Toledo, St. Louis & Western Railroad Company and W. L. Ross, receiver; The Ulster & Delaware Railroad Company; The Virginian Railway Company; Wabash Railroad Company; Washington Southern Railway Company; Waterloo, Cedar Falls & Northern Railway Company; Western Maryland Railway Company; West Jersey & Seashore Railroad Company; The Wheeling & Lake Erie Railway Company; The Zanesville & Western Railway Company; Arcade & Attica Railroad Corporation; The Akron, Canton & Youngstown Railway Company; Arcadia & Betsy River Railway Company; Bloomsburg & Sullivan Railroad Company;
Boyne City, Gaylord & Alpena Railroad Company;
313 Cadiz Railroad Company; Central West Virginia & Southern

Railroad Company; Chesapeake Western Railway; Chicago & Illinois Midland Railway Company; Chicago & Illinois Western Railroad; Cornwall Railroad Company; Coudersport & Port Allegany Railroad Company; Dansville & Mount Morris Railroad Company and A. S. Murray, receiver; The Delaware Valley Railway Company; The East Jordan & Southern Railroad Company; Fonda, Johnstown & Gloversville Railroad Company; Genesee & Wyoming Railroad Company; Grafton & Upton Railroad Company; Ironton Railroad Company; Kalamazoo, Lake Shore & Chicago Railway Company; Louisville & Jeffersonville Bridge & Railroad Company; Manistee & Northeastern Railroad and The Michigan Trust Company, receiver; Marion & Rye Valley Railway Company; Maryland & Pennsylvania Railroad Company; Montour Railroad Company; Mount Jewett, Kinzua & Riterville Railroad Company; Morristown & Erie Railroad Company; New Jersey, Indiana & Illinois Railroad Company; New York & Pennsylvania Railway Company; The Pennsylvania & Atlantic Railroad Company (Union Transportation Company, lessee); The Pittsburgh, Shawmut & Northern Railroad Company and F. S. Smith, receiver; The Pittsburgh, Lisbon & Western Railroad Company; Prattsburg Railway Corporation; Rahway Valley Railroad Company; Rapid Railroad Company; Raritan River Railroad Company; Reynoldsville & Falls Creek Railroad Company; St. Louis & Hannibal Railroad Company; The Tuckerton Railroad Company; Traverse City, Leelanau & Manistique Railroad Company; Unadilla Valley Railway Company; Virginia Southern Railroad Company; The Wabash, Chester & Western Railroad Company and J. Fred Gilster, receiver; Western Allegheny Railroad Company; West Virginia Northern Railroad Company; Wharton & Northern Railroad Company; Williamsport & North Branch Railroad Company and Edw. Bailey, receiver; and The Youngstown & Ohio River Railroad Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, that the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before August 5, 1921, and thereafter to abstain, from publishing, demanding, or collecting any rates for the transportation of yellow-pine lumber, timber, and lumber products, in carloads, from Knoxo, Miss., to the Ohio River crossings, to destinations in Wisconsin, Minnesota, Iowa, and Missouri, to destinations in central and eastern trunk line territories, and to destinations in Tennessee and Kentucky, the rates to which

are blanketed from yellow-pine producing points on the Illinois Central and New Orleans Great Northern Railroads south of Jackson, Miss., in excess of the rates contemporaneously published, demanded, or collected by them for the transportation of yellow-pine
314 lumber, timber, and lumber products, in carloads, from Fernwood, Tylertown, and Foxworth, Miss., to the same destinations.

It is further ordered, that said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before August 5, 1921, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of yellow-pine lumber, timber, and lumber products, in carloads, from Knoxo, Miss., to the destinations described in the next preceding paragraph, rates not in excess of the rates contemporaneously maintained and applied by them to the transportation of yellow-pine lumber, timber, and lumber products, in carloads, from Fernwood, Tylertown, and Foxworth, Miss., to the same destinations.

And it is further ordered, that this order shall continue in force until the further order of the commission.

By the commission.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

449 *Order setting cause for hearing.*

Filed Aug. 12, 1921.

In the District Court of the United States, Southern District of Mississippi, ———Division.

[Title omitted.]

The undersigned, judge of the United States District Court in and for the Eastern District of Louisiana, having been duly and properly designated by the senior United States circuit judge in and for the Seventh Circuit to act for and in the place of the district judge in and for the Southern District of Mississippi, who is now absent from the district and from the State of Mississippi, having been advised that a bill in the above styled cause has been filed in the District Court of the United States for the Southern District of Mississippi, wherein there is sought to have canceled, annulled and set aside an order of the Interstate Commerce Commission and wherein an injunction is sought to restrain the enforcement of an order of the Interstate Commerce Commission, hereby calls to his assistance to hear and to determine the application of the plaintiffs for the said injunction, the honorable R. W. Walker, circuit judge, and the honorable W. I. Grubb, district judge, for the purpose of hearing said application, and the undersigned district judge hereby fixes Birmingham,

Ala., as the place, and the 18th day of August, nineteen twenty-one, at ten o'clock a. m. as the time for hearing said application.

It is further ordered that a copy of this order be forwarded to each of the said judges so designated, and that the clerk of the District Court in and for the Southern District of Mississippi forward by mail notice of the fact, time, and place of the said hearing to the secretary of the Interstate Commerce Commission, Washington, D. C., and to the Attorney General of the United States, Washington, D. C., as required by statute, which notice shall be accompanied by a copy of this order.

Witness my hand this 11th day of August, 1921.

RUFUS E. FOSTER,
Judge.

[File endorsement omitted.]

450 *Motion for preliminary injunction.*

Filed Aug. 11, 1921.

In the District Court of the United States for the Jackson Division of the Southern District of the State of Mississippi.

[Title omitted.]

Now comes the Illinois Central Railroad Company and Fernwood, Columbia & Gulf Railroad Company and moves the court to grant a preliminary injunction to them upon the bill heretofore filed upon the 4th day of August, 1921, wherein the United States was a party defendant, there having been heretofore given to the Interstate Commerce Commission and to the United States Attorney General due notice of the time and place of the hearing of this application, and petitioners respectfully represent that irreparable damages would ensue in this, viz: They would be compelled to publish tariffs, fundamentally altering their entire rate structure, which, when published, would be without any effect in this, said commission is, as petitioners are advised, without authority to make said publication effective.

Second. In this, that if the arbitrary condemned as unjustly discriminatory were removed, it would be impossible to collect the same from those shipments made while the unlawful rates were in effect, and the amount of such arbitrary would be entirely lost to the carriers in this, that the cost of collection from the shippers, if it could be collected, would be in excess almost of the amount collected, and that who would be responsible for the freight is a matter which would be difficult, if not impossible, to accurately ascertain, and thereby the amount of such freight to which petitioners were lawfully entitled under their lawful tariffs would be diverted and destroyed and given to persons who would not be entitled to have and receive the same.

451 That in support of this motion affidavits and oral testimony will be introduced.

[File endorsement omitted.]

454 *Motion for order setting time and place for hearing on preliminary injunction.*

In the District Court of the United States for the Jackson Division of the Southern District of the State of Mississippi.

[Title omitted.]

To the Hon. Rufus E. Foster, District Judge in and for the State of Louisiana:

Comes the Illinois Central Railroad Company, a corporation duly chartered, organized, and existing under and by virtue of the laws of the State of Illinois, with its residence and legal domicile therein, hereinafter called "Central Company," and the Fernwood, Columbia & Gulf Railroad Company, a corporation duly chartered, organized, and existing under and by virtue of the laws of the State of Mississippi, having its legal domicile therein, hereinafter called "Fernwood Company" (and both said Central Company and said Fernwood Company, hereinafter called "Carriers") respectfully represent that the Hon. Edwin R. Holmes is the sole United States district judge residing in the State of Mississippi, and that there is no other Federal judge to be found therein. Upon August 4th, 1921, in the above-entitled cause, in the above-entitled court, there was filed against the United States a petition to set aside, annul, and suspend an order of the Interstate Commerce Commission, made and entered originally upon April 5th, 1921, and the several orders suspending the effective dates thereof until September 5th, 1921, in that certain cause lately pending, brought by the Swift Lumber Company, sole complainant, against the carriers and divers other carriers, and numbered upon the docket of said commission 10827, and that said District Court of the United States in and for the Jackson Division of the Southern District of Mississippi is the court having jurisdiction thereover, and that the pleas and proceedings had before said
455 commission are annexed as an exhibit to the original bill filed and made a part thereof as fully as if therein copied.

The said order so made by said Interstate Commerce Commission was entered by a divided commission; five members thereof reversed the examiner and disregarded his report as a matter of law, concurring with him in his findings of fact, three members were for confirming the report and dismissing the petition, and three members of said commission did not participate in the decision; all members of the division who heard the oral argument to the commission, there being two left at the date of the decision, were in favor of dismissing the petition.

That said order so made by said commission fundamentally alters the complete rate structure in the southeastern portion of the State

of Mississippi, and integrates a principle of rate making therein radically varying from that which had obtained for twenty-five years by compelling the independent short line carriers to name the same rate from their local stations as obtained from stations upon the trunk lines, and that such alteration will result in a fundamental decrease in a large amount of the revenue of the carriers. That said order became effective September 5th but fifteen days prior thereto it is essential that said rates should be published, and so to do involves considerable labor and expense, but must be done unless suspended by this honorable court by the granting of appropriate temporary injunction.

Unless enjoined and restrained for the reasons set forth in the original bill, irreparable damage will accrue to the carriers wherefor they have no means of redress saving the issuance of an injunction by this court due to the absence of said Federal judges from the State of Mississippi.

Unless enjoined before the 20th day of August, 1921, the cost
456 of preparation and publication of said tariffs containing said illegal rates will have to be made, and the time and money therein spent will be irretrievably lost, contrary to the very rights of the parties.

Carriers therefore ask that in pursuance of the statutes in that behalf made and provided, that your honor will name forthwith a time when and a place where the annexed application for a preliminary injunction in accordance with the prayer of said bill may be heard so that notice, as by law required, may be thereof given to the parties thereunto entitled, and that at said time and said place your honor will call the two other judges required by statute so that at said time and place so thus to be fixed due notice may be given to the honorable the Attorney General of the United States, and to the Interstate Commerce Commission, and such other persons as may be thereunto lawfully entitled, and that at such time and place a preliminary injunction may issue upon the bill filed under the application therefor filed in this cause.

That your honor has been designated as a proper judge to act in the premises by order duly made by the Honorable R. W. Walker, senior circuit judge for the Fifth Circuit.

Wherefore, as the issues involved are of the gravest import, especially to the Fernwood Company, the carriers pray that an order be made fixing said time and said place whereat said preliminary injunction may be applied for, and as in duty bound.

R. V. FLETCHER,
Atty. for I. C. R. R.
GREEN & GREEN,
Atty. for F., C. & G. Ry.

457 *Motion for preliminary injunction.*

Filed Aug. 11, 1921.

In the District Court of the United States for the Jackson Division of the Southern District of the State of Mississippi.

[Title omitted.]

Now comes the Illinois Central Railroad Company and Fernwood, Columbia & Gulf Railroad Company and moves the court to grant a preliminary injunction to them upon the bill heretofore filed upon the 4th day of August, 1921, wherein the United States was a party defendant, there having been heretofore given to the Interstate Commerce Commission and to the United States Attorney General due notice of the time and place of the hearing of this application, and petitioners respectfully represent that irreparable damages would ensue in this, viz: They would be compelled to publish tariffs, fundamentally altering their entire rate structure, which, when published, would be without any effect in this that said commission is, as petitioners are advised, without authority to make said publication effective.

Second. In this, that if the arbitrary condemned as unjustly discriminatory were removed, it would be impossible to collect the same from those shipments made while the unlawful rates were in effect, and the amount of such arbitrary would be entirely lost to the carriers in this, that the cost of collection from the shippers, if it could be collected, would be in excess almost of the amount collected and that who would be responsible for the freight is a matter which would be difficult, if not impossible, to accurately ascertain, and thereby the amount of such freight to which petitioners were lawfully entitled under their lawful tariffs would be diverted and destroyed and given to persons who would not be entitled to have and receive the same.

458 That in support of this motion affidavits and oral testimony will be introduced.

459

[File endorsement omitted.]

461 *Notice of hearing of application for preliminary injunction.*

Filed Aug. 11, 1921.

In the District Court of the United States for the Jackson Division of the Southern District of Mississippi.

[Title omitted.]

To the Secretary of the Interstate Commerce Commission, Washington, D. C.:

To the Attorney General of the United States, Washington, D. C.:

You will hereby take notice that in pursuance of an order, dated August 11th, 1921, rendered by Hon. Rufus E. Foster, district judge of the United States for the State of Louisiana, said judge having been duly and properly designated by the senior United States circuit judge in and for the Seventh Circuit to act for and in the place of the district judge in and for the Southern District of Mississippi, there will be heard in the above-styled cause, before the judges designated in the said order, a copy of which order is hereby attached to this notice, an application for a preliminary injunction on the 18th of August, 1921, in the city of Birmingham, Alabama.

Dated this 11th day of August, 1921.

R. V. FLETCHER,
Atty. for I. C. R. R.
GREEN & GREEN,
Attys. for F. C. & G. R. R.

[File indorsement omitted.]

468 *Motion of the United States to dismiss the bill of complaint.*

Filed Aug. 18, 1921.

In the United States District Court, Southern District of Mississippi, Jackson Division.

[Title omitted.]

United States of America, defendant, by its counsel, now comes and moves the court to dismiss the bill of complaint in the above-entitled cause at the cost of the plaintiffs.

As grounds for this motion it is shown:

1. The bill of complaint and the exhibits attached thereto and made a part thereof is without equity on its face and does not state any cause of action against the defendant and the court may not grant the relief prayed or any part of the same.

2. The alleged contract may not stand if found to contravene the provisions of the statute.

3. Blanket rates for zones and exceptions thereto as to either rates or areas are all matters within the exclusive jurisdiction of the commission whose finding of fact is final.

469 4. The views expressed by the dissenting members of the commission are foreclosed by the findings in the main report.

5. The report of the Interstate Commerce Commission and order entered in pursuance thereof were made and entered after full hearing and due notice, and rest on substantial evidence adduced on the

issues made by the parties, and the matters and things alleged in the bill of complaint and sought to be put in issue are foreclosed by the findings of fact.

6. It appears from the bill of complaint and the exhibits attached thereto and made a part thereof that the order of the Interstate Commerce Commission sought to be enjoined, set aside, annulled, or suspended was authorized by the acts to regulate commerce, and the transportation act, 1920, and that it was regularly made and entered by the commission in a proceeding properly pending and conducted,

7. The plaintiffs have not in and by the bill of complaint shown that in making the order the Interstate Commerce Commission transcended the power conferred upon it by the statute or violated any right of the plaintiffs protected by the Constitution of the United States or any other right of the plaintiffs over which the court may exercise jurisdiction.

Wherefore, and for divers other good causes appearing on the face of the bill of complaint, more fully to be pointed out on the
470 hearing hereof, defendant prays that its motion be sustained, and for such other and further action as may be appropriate.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.
JULIAN P. ALEXANDER,
United States Attorney, Southern District of Mississippi.

[File endorsement omitted.]

473 *Answer of the Interstate Commerce Commission.*

Filed Aug. 18, 1921.

In the District Court of the United States for the Southern District of Mississippi, Jackson Division.

[Title omitted.]

The Interstate Commerce Commission, intervening defendant in the above-entitled cause, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs' bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for it to make answer unto, answers and says:

I.

Answering paragraphs I to XXV, inclusive, of the bill of complaint, this defendant, which for convenience will be referred to hereinafter as the commission, admits that a complaint was filed with the commission by the Swift Lumber Company on July 2, 1919, and was docketed as No. 10827, as alleged in the bill of com-

plaint; that answers to said complaint were filed with the commission by various defendants named therein; that the case was duly heard; that briefs were filed on behalf of the parties; that a proposed report was made by the examiner who conducted the
474 hearing; that exceptions to said proposed report were filed by the Swift Lumber Company and the Fernwood & Gulf Railroad Company; that the case was argued before certain commissioners; that the commission made a report and order in the premises on April 5, 1921, reported in 61 I. C. C. 485; that defendants filed petitions for rehearing and reargument; and that said petitions were denied by the commission. For definite information concerning the contents of said complaint, answers, and other documents mentioned above, the commission respectfully refers the court to those documents.

The commission further alleges that copies of said documents filed in said docket No. 10827, referred to in the bill of complaint, were not attached to the copy of the bill of complaint herein served upon the commission, and therefore the commission neither admits nor denies that copies of said documents are attached to the bill of complaint filed in this suit and marked as exhibits and made a part thereof.

The commission denies that on the date of its said report and order in docket No. 10827, namely, April 5, 1921, it was composed of eleven members, and alleges that on the date mentioned it was composed of nine members.

The commission further alleges that by order dated June 24, 1921, the effective date of the order of April 5, 1921, was made September 5, 1921, instead of August 5, 1921; and that by order dated July 29, 1921, defendants were given permission to establish rates in compliance with the order of April 5, 1921, upon not less than 15 days' notice instead of upon not less than 30 days' notice.

The commission further alleges that the findings made in said report and order of April 5, 1921, as modified on June 24, 1921, and July 29, 1921, were, and are, and that each of them was, and is, fully supported and justified by the record before the commission in that proceeding.

The commission further alleges that in making said report, findings, and orders it considered and weighed carefully, in the
475 light of its own knowledge and experience, every fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding, including matters covered by allegations in the petition in this suit.

The commission further alleges that said report, findings, and orders were not made by it either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support them; that in making them it did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and that the commission denies each of, and all, the allegations to the contrary contained in said petition.

II.

Except as herein expressly admitted, the commission denies the truth of each of, and all, the allegations contained in the petition herein in so far as they conflict either with allegations in this answer or with either the statements or conclusions of fact included in the commission's said report and orders, which are hereby referred to and made a part hereof.

All of which matters and things the commission is ready to aver, maintain, and prove, as this honorable court shall direct, and therefore prays that said petition be dismissed.

INTERSTATE COMMERCE COMMISSION,
J. CARTER FORT,
By WALTER MCFARLAND, *Counsel.*

P. J. FARRELL,
Of Counsel.

476 CITY OF WASHINGTON,
District of Columbia, ss:

Joseph B. Eastman, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-named intervening defendant, and makes this affidavit on behalf of said commission; that he has read the foregoing answer and knows the contents thereof, and that the same is true.

JOSEPH B. EASTMAN.

Subscribed and sworn to before the undersigned, a notary public within and for the District of Columbia, this 16th day of August, 1921.

[SEAL.] ALFRED HOLMEAD,
Notary Public.

[File endorsement omitted.]

477 *Motion of Swift Lumber Company, Intervenor, to dismiss the bill of complaint.*

In the United States District Court, Southern District of Mississippi, Jackson Division.

[Title omitted.]

Filed Aug. 18, 1921.

Now comes the Swift Lumber Company, a corporation organized under the laws of Mississippi, and having its principal place of business at Knoxo, in that State, and shows that it is the complainant in cause No. 10826 on the docket of the Interstate Commerce Commission, in whose favor the order of the commission complained of the bill of complaint herein was entered. Said Swift Lumber Company prays leave to intervene herein for the purpose of filing this motion, and for filing such answer to said bill of complaint or other plead-

ings as may hereafter be appropriate; and for cause of this present motion to dismiss said bill of complaint, says:

1. Intervenor shows that under the order of the Interstate Commerce Commission herein attacked it is entitled to have made effective September 5, 1921, rates on lumber shipped by it from Knoxo, Miss., not higher than those contemporaneously in effect from Fernwood, Tylertown, and Foxworth, Miss.; and the suspension of said order of the commission during the pendency of this action, as prayed for in the concluding portion of said bill of complaint, will deprive it of such rates, and subject it to a burden and damages which are unjust, for which it must await relief until the final determination of this case, even if it can be fully compensated therefor. Wherefore, intervenor prays that the temporary restraining order so prayed for by plaintiffs be denied, and dismissed.

2. In other respects, intervenor adopts for its own the motion to dismiss the complaint, filed herein by the United States, and the grounds therefor, and prays that the same be considered in all respects as if made by intervenor.

SWIFT LUMBER COMPANY,
Intervenor.
By L. PALMER, *Its Attorney.*

[File endorsement omitted.]

478 *Order granting preliminary injunction.*

Filed Aug. 19, 1921.

United States District Court, Southern District of Mississippi, Jackson Division.

[Title omitted.]

This day this cause came on to be heard and was argued by counsel; and thereupon, after consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

1. That a preliminary injunction be, and the same is hereby, issued out of this court in accordance with the prayer of the bill of complaint against the order of the Interstate Commerce Commission of April 5, 1921, referred to in the bill of complaint, and that the said order be, and the same is hereby, suspended and enjoined until the further order of the court.

2. That the plaintiffs shall give bond in the penal sum of twenty-five thousand ($25,000) dollars, to be approved by the clerk of this court, conditioned that the plaintiffs will prosecute the above-entitled cause with all convenient diligence, and will indemnify and save harmless the United States, Interstate Commerce Com-
479 mission, Swift Lumber Company, and any and all persons whomsoever who may be interested therein or affected thereby for any loss, costs, or damages which they, or any of them, may sustain by reason of the issuance of the preliminary injunction in the event the order granting the preliminary injunction should be

reversed and the order of the Interstate Commerce Commission, hereinbefore referred to, should be sustained. Jurisdiction of causes of actions for recovery of damages on this bond shall by its terms be vested in this court.

3. That the plaintiffs, and each of them, shall make and keep true and accurate accounts of any and all shipments moving over the lines of the plaintiffs from and after the date hereof, and the amounts charged and paid to them and each of them, on the basis of the rates now in force and effect which would have been reduced or affected by the order of the Interstate Commerce Commission had the same not hereby been suspended and enjoined.

By the court:

R. W. WALKER,
United States Circuit Judge.
RUFUS E. FOSTER,
W. I. GRUBB,
United States District Judges.

480

[File endorsement omitted.]

482 *Bond on preliminary injunction.*

Filed Aug. 19, 1921.

In the United States District Court of the Jackson Division of the Southern District of the State of Mississippi.

[Title omitted.]

Whereas, upon the 18th day of August, 1921, a temporary injunction was granted in the above-entitled cause by the Honorable R. W. Walker, United State circuit judge, Rufus E. Foster and William I. Grubb, United States district judges, upon complainants therein entering into bond in the sum of twenty-five thousand dollars (25,000.00) as therein prescribed.

Now, know all men by these presents, that we, the Illinois Central Railroad, a corporation, and the Fernwood, Columbia & Gulf Railroad Company, a corporation, our successors and assigns as principals, and Yazoo & Mississippi Valley R. R. Co., as surety, are held and firmly bound unto the United States of America, the Interstate Commerce Commission, the Swift Lumber Company, and all other persons mentioned in said order, granting said injunction in the penal sum of twenty-five thousand dollars ($25,000.00), for the payment of which, well and truly to be made, we bind ourselves firmly by these presents.

Executed this 19th day of August, 1921, but this bond is upon condition, viz, that the above bounden principals will well and truly prosecute the above-entitled cause with all convenience and diligence and will indemnify and save harmless the United States, the Interstate Commerce Commission, Swift Lumber Company, and

any and all persons whomsoever may be interested therein or affected thereby for any loss, cost, or damages which they or any of them may sustain by reason of said preliminary injunction in
483 the event the order granting the preliminary injunction should be reversed and the order of the Interstate Commerce Commission made upon the 5th day of April, 1921, in the case of Swift Lumber Company v. The Fernwood, Columbia & Gulf Railroad Company, numbered 10827, on the docket of said Interstate Commerce Commission, should be sustained, and will make and keep true and accurate account of any and all shipments moving over the lines of the plaintiffs from and after the date hereof, and the amounts charged and paid to them and each of them on the basis of the rates now in force and effect which would have been reduced or effected by the order of the Interstate Commerce Commission aforesaid had the same not been suspended and enjoined, and if said above bounden principals shall well and truly do and perfrom each and every of the foregoing conditions this bond shall be void, otherwise to remain in full force and effect. Jurisdiction of causes of action for recovery of damages in this bond shall be vested in this court alone.

ILLINOIS CENTRAL RAILROAD COMPANY,
By JAS. SANDERS, *Atty. in Fact.*
FERNWOOD, COLUMBIA & GULF RAILROAD COMPANY,
By GREEN & GREEN, *Attys. of Record in Fact.*
YAZOO & MISS. VALLEY RAILROAD CO., *Surety,*
By JAS. SANDERS, *Atty. in Fact.*

I, the undersigned clerk of the District Court of the United States for the Jackson Division of the Southern District of Mississippi, approve the foregoing bond by the power in me vested by the decree in this cause made this the 19th day of August, 1921.

JACK THOMPSON, *Clerk.*

484

[File endorsement omitted.]

486 *Writ of injunction.*

Filed Aug. 19, 1921.

THE UNITED STATES OF AMERICA,
Southern District of Mississippi;
The President of the United States of America, to all to whom these presents may come, greeting:

Whereas there has been filed in the said court a bill of complaint by the Illinois Central Railroad Company et al. against the United States of America, wherein the Interstate Commerce Commission and Swift Lumber Company intervened as defendants, and

Whereas under pleas and proceedings duly had a temporary injunction was granted in accordance with prayer of said bill upon

the giving of a bond as required by said decree in the penal sum of twenty-five thousand dollars, which has been duly given and approved,

Now this writ of injunction is to command you, the said United States of America, the Interstate Commerce Commission, the Swift Lumber Company, your agents, attorneys, and employes, that you forthwith cease and desist from enforcing or seeking to enforce that certain order made by the Interstate Commerce Commission in that certain cause lately before it pending styled Swift Lumber Company v. Fernwood, Columbia and Gulf Railroad Company et al., numbered on its docket 10827, wherein the final order herein enjoined was made upon April 5th, 1921, and that you and each of you forthwith cease and desist from attempting to give to said order of said commission any force or effect until the further order of this court.

Witness the Honorable R. W. Walker, United States circuit judge, Rufus E. Foster, and W. I. Grubb, United States district judges, on this the 19th day of August, A. D. 1921.

[SEAL.]

JACK THOMPSON,
Clerk, U. S. District Court,
So. District of Miss.

[File endorsement omitted.]

487 *Answer of Swift Lumber Company to bill of complaint.*

Filed Nov. 16, 1921.

In the District Court of the United States for the Southern District of Mississippi, Jackson Division.

[Title omitted.]

To the honorable the District Court of the United States for the Southern District of Mississippi, Jackson Division:

Now comes the Swift Lumber Company, having heretofore intervened in the above-entitled cause by motion to dismiss the bill of complaint filed by the plaintiffs herein; and said motion having been overruled and said complaint assigned for trial upon its merits, prays leave of the court to file this its answer as such intervening defendant to said bill of complaint; and for such answer to the matters and things alleged in the various paragraphs of said bill of complaint says:

I.

In answer to paragraph 1 of said bill, this intervenor says that it is the Swift Lumber Company referred to in said paragraph as the complainant in case No. 10827 on the docket of the Interstate Commerce Commission. It admits that the allegations of said paragraph are true, except so far as the concluding portion thereof may be susceptible to the possible interpretation that this intervenor, in its said

complaint to the Interstate Commerce Commission (hereinafter called the commission) charged a violation of sections 1, 2, and 3 of the interstate commerce act against said Fernwood & Gulf
488 Railroad Company (designated in said bill, and hereinafter, the Fernwood Company) alone; the fact being that such complaint of intervenor charged a violation of said sections against all the defendants named therein by reason of the maintenance and assessment of the various rates mentioned therein on lumber from Knoxo, Miss., to interstate points. Also except that the supplemental complaint of intervenor therein referred to was not in fact filed with the commission as such.

II.

Intervenor admits that plaintiffs herein filed answers to its complaint before the commission substantially as alleged in paragraph II of the bill of complaint.

III.

Intervenor admits that the further matters of defense alleged in paragraph III of the bill of complaint were set up by defendants in their said answers.

IV.

Intervenor admits that a hearing was had on its said complaint as alleged in paragraph IV of the bill of complaint, but it denies that the testimony adduced on such hearing showed the facts therein claimed, except the specific facts set out in the subdivision of said paragraph numbered 2. Intervenor says that on the contrary it fully sustained the burden of proof imposed upon it, and established by proper evidence that the rates complained of were unreasonable (although such contention was not upheld by the commission), and also showed, as was held by the commission, that such rates were discriminatory, and operated to the undue prejudice and disadvantage of intervenor and said station of Knoxo, Miss., and to the undue advantage and favor of other shippers of like commodities and other stations and points of *of* origin thereof; and the finding by the commission of undue prejudice and disadvantage was amply sustained by evidence adduced and exhibits filed in the record of said cause before the commission.

V.

Intervenor admits the allegations of paragraph V of the bill of complaint.

VI.

Intervenor admits the allegations of paragraph VI of said bill of complaint.

489

VII.

Intervenor admits the allegations of paragraph VII of said bill of complaint, with the explanation that the supposed supplemental complaint therein referred to was not filed with the commission as such, but was utilized as an exhibit at the hearing before the commission's examiner.

VIII.

Intervenor admits the allegations of paragraph VIII of said bill of complaint.

IX.

Intervenor has no sufficient knowledge of the matters set up in paragraph IX of the bill of complaint to either admit or deny the same, save as to those in the first subdivision thereof, which it admits, and the findings which it is alleged the commission would have made, which it denies. Intervenor points out, however, that it appears from said allegations that the findings of the commission herein complained of were duly and lawfully made by a majority of the commission then constituted, and is therefore not subject to review by this court for the reasons assigned in said paragraph. In addition thereto, intervenor shows that the merits of the case were in fact passed upon subsequently by a full commission of eleven members, by the overruling of plaintiff's motions for reargument and rehearing.

X.

Intervenor denies all the allegations of paragraph X of the bill of complaint, except as follows: It admits that intervenor, prior to the erection of its sawmill at Knoxo, Miss., entered into a written contract with the Fernwood Lumber Company, the predecessor in ownership of the line of railway now owned and operated by the Fernwood Company, complainant herein, by which it received from said Fernwood Lumber Company certain rights of way for its logging railroad over the lands of the latter company, from intervenor's timber to its mill site at Knoxo, subject to certain mutual rights and obligations specified in said contract as to the construction and operation of said logging railroad. It says that having been led to select Knoxo for the location of its sawmill for reasons not material to this case, it procured said right of way from said Fernwod Lumber Company, which was moved to grant the same by the desire to secure the location of intervenor's sawmill on its road as a source of revenue to itself. The clause in said contract by which intervenor agreed to ship all its product over said line of railroad

490 was in effect only a statement of the actual consideration moving said Fernwood Lumber Company to grant such right of way, but in actual effect was superfluous, for the reason that intervenor, having erected its sawmill at Knoxo, had no other

means of making its shipments; for which reason it has necessarily complied strictly with that portion of its said contract.

Intervenor further says that said contract was entirely silent as to the rates which intervenor should pay on its said shipments, and did not purport to obligate intervenor to pay the then existing rates or rates on any basis. That apart from the fact that such a contract as claimed by said Fernwood Company would have been contrary to public policy, and therefore void, the terms of said contract do not justify such construction by any reasonable interpretation; and even assuming such an interpretation, it has been violated by said Fernwood Company by several successive advances in the rates existing at the time said contract was entered into.

XI.

In answer to the first three subdivisions of paragraph XI of the bill of complaint, intervenor says the same are in effect answered by paragraph X hereof, and denies that it was or is estopped to prosecute its said complaint before the commission; and it further says that it could not in law be estopped by any contract to complain of discriminatory rates.

It admits the allegations of the fourth and fifth subdivisions of said paragraph, including the quotation of the commission's order denying the petitions for rehearing and reargument therein described. It also admits that with the exception mentioned in the sixth subdivision (numbered 9) of said paragraph, the commission found that the rates complained of by intervenor had not been shown to be unreasonable in and of themselves.

Intervenor has no knowledge sufficient to admit or deny the allegations contained in the seventh (numbered 10) and eighth subdivisions of said paragraph XI of the bill of complaint. It says, however, that even if the circumstances and conditions surrounding the operation of the railroad of the Fernwood Company be as herein stated, the effect to be given to them in passing upon the complaint of intervenor before the commission was properly within the discretion of the commission, which has determined them adversely to the contention of said Fernwood Company. Intervenor further says that although such matters were in effect assigned as matters of defense by said Fernwood Company in its answer filed with the commission to intervenor's complaint, as alleged in
91 paragraph II of its bill of complaint herein, it adduced no evidence to adequately support such contention; nor does it allege in the bill of complaint herein the necessary facts and conditions to indicate that the findings and order of the commission preclude it from securing from the operation of its railroad the revenue to which it claims to be entitled. Intervenor says that, as alleged in paragraph X of the bill of complaint, said Fernwood Company's line of railroad was originally built and owned by the Fernwood

Lumber Company for the primary purpose of transporting its logs from the timber along said road to its mill at Fernwood, Miss., and was afterwards sold to the Fernwood Company, whose ownership of stock was and is practically the same as that of the Fernwood Lumber Company. Intervenor says that if it be true that said railroad was built solely for said purpose of hauling timber and timber products, whether the property of said Fernwood Lumber Company or of others, such purpose was logically and necessarily more essentially exclusive while said railroad was owned and operated by said Fernwood Lumber Company; and such operation should have been charged with a capital retirement reserve which should have been reflected in the price at which the road was sold to the Fernwood Company. Said Fernwood Company, however, at the hearing of said complaint, and throughout the whole proceedings before the commission, entirely failed to show that its original investment in the purchase of said railroad from the Fernwood Lumber Company was a reasonable one, allowing a proper retirement reserve on its cost during its operation by said lumber company. It also appeared that the great bulk of its traffic consisted of logs hauled for said Fernwood Lumber Company, and it failed to show what revenue it received on such traffic, or the reasonableness of the rates charged therefor, either in and of themselves or relatively to the charges assessed against intervenor. Intervenor therefore says that whatever may be the merits of the contentions of the Fernwood Company in said portion of its bill of complaint, or their justification of the discriminatory rates charged intervenor, it entirely failed to sustain the same by proof before the commission, and therefore is precluded from urging the same before this court.

XII.

In answer to paragraph XII of said bill of complaint, intervenor says that it has no knowledge sufficient to admit or deny the allegations contained in the first subdivision thereof. As to the second subdivision thereof, it says that the order of the commission in question does not in any manner interfere with or disturb said
492 Fernwood Company in the exercise of any proper individual policies, but is merely an exercise of the powers vested in the commission by law to require the establishment of proper, reasonable, and nondiscriminatory rates, which regulatory power extends to the condemnation of individual policies. That the Fernwood Company's policy of plussing rates from its local points, especially lumber rates, is one specially calculated to invite scrutiny, in view of the fact that it involves placing industries on it own line at a disadvantage as compared with those on other roads adjacent to it, and the further fact that the proprietary interests of said Fernwood Company are largely if not entirely identical with those of the Fernwood Lumber Company, with which sawmills at its local

points compete. The control by the commission of the individual policies of the Fernwood Company by its order was within the proper and reasonable exercise of its power, so far as such control was involved in passing upon the rates assessed against the shipments of intervenor, not by the Fernwood Company alone, but by all the other defendants complained of before the commission.

XIII.

Answering paragraph XIII of said bill of complaint, intervenor admits that the lumber rate situation on independently operated short lines in the territory therein described is as therein stated, but intervenor has no knowledge as to how such situation was established. It denies that said alleged individualization of lumber rates by said carriers was in any manner beyond the control of the commission; and further points out that, as shown by the record before the commission, accompanying the bill of complaint herein, the issue before the commission involved the lumber rate adjustment in a much larger territory of origin than that described in said paragraph, in which dissimilar conditions obtained; and from such record it appeared that as a result of the acts of the various defendants in said case, whether dictated by their individual policies or arising from joint action among them, intervenor had been subjected to the imposition of unduly discriminatory and prejudical rates, as was held by the commission.

XIV.

Answering paragraph XIV of said bill of complaint, intervenor says that the record before the commission does not justfy the assumption that it is seeking to eliminate as a general policy the plussing of junction point rates by independent owned and operated short line carriers, although the commission has full power to
493 do so where necessary to correct unreasonable, discriminatory or preferential rates. Intervenor does not attempt to say whether or not the making of rates on combinations of locals or on arbitraries over the junction point rates on shipments from the several short line roads mentioned in said paragraph is proper under the circumstances surrounding them, or whether the individual acts of said carriers in relation thereto constitute a proper and lawful exercise of their discretion; but it says that in the instant case of rates from Knoxo the record amply shows that in the light of the surrounding circumstances such plussing of the junction point rates resulted in undue discrimination and prejudice against intervenor, and fully sustains the findings of the commission to that effect, made in the proper exercise of its discretionary power.

Intervenor denies that the effect of the said order of the commission will be to deprive complainants of the revenue to which they are entitled under the transportation act, and says that the commission, having granted to the complainants and all other carriers

the advances in rates found by it to be necessary to meet the requirements of said act, is not precluded from correcting such unreasonable and discriminatory rates as it may find to exist, especially where, as in the instant case, such discrimination is aggravated by the advances made in accordance with said act. Intervenor also denies that by virtue of the location of its business it is subject to any place disadvantage, and that any such disadvantage was reflected in the price it paid for its stumpage. It says that, on the contrary, in view of the geographical location of its mill it occupies a position of place advantage; and the theory that it is at a place disadvantage rests solely upon the higher rates upon its products, and hence can form no justification for such rates.

XV.

Answering paragraph XV of said bill of complaint, intervenor says that the decision of the commission complained of is not, as is in effect argued therein, solely an attack upon the individual policies of complainants in the making of their rates. Such individual policies are but one factor in the making of the rates in question, which as a whole are the result of the combined action of all the defendants before the commission; and the displacing of the individual policies of complainants is but an incident to the order of the commission, made in the light of many other circumstances and conditions developed in the record before it, and fully justifying such order.

494

XVI.

Intervenor refers to paragraph XV above as a sufficient answer to paragraph XVI of the bill of complaint.

XVII.

Intervenor denies all and singular the allegations of paragraph XVII of the bill of complaint.

XVIII.

Omitted in order to make the paragraphs of this answer conform in numbering to those of the bill of complaint.

XIX.

Intervenor says, in answer to paragraph XIX of the bill of complaint, that the evidence offered before the commission showed that the rates complained of by it discriminated against intervenor and against said station of Knoxo, and subjected them to undue prejudice and disadvantage. It denies that the decision of the commission was based solely, or even primarily, upon the fact that the Central Company extended the junction point rates to points on

the Mississippi Central Railroad, and participated in through rates on lumber from points on the Alabama & Mississippi, the Mississippi & Western, the Cybur, Gulf & Northern, and the Pearl River Valley Railroads, and points out that the issue found and decided by the commission was thus stated by it:

"The fundamental issue is whether carriers which have equalized rates on lumber to certain destinations from all their main-line and branch-line points, and from points on certain independent short lines as well, which are located within a producing territory of wide extent, may, without being guilty of undue prejudice, refuse to extend similar blanket rates to producing points within such territory which are located on other independent short lines."

As will be seen, the controlling fundamental condition thus referred to is the maintenance of uniform or blanket rates from a wide territory of origin, shown by the record to extend for a distance of about 200 miles north and south by the same distance east and west, Knoxo being located approximately in its center. The record therefore showed discrimination against intervenor in the following respects:

1. The blanket rate ignored differences in the length of haul, and the consequent cost of service, to the extent of 200 miles (and for more than that distance on the line of the Central Company);
495 whereas an arbritrary first of 2 cents and later of 2.5 cents per 100 pounds was added for the 27-mile haul from Knoxo to Fernwood, and the 7-mile haul from Knoxo to Tylertown.

2. The blanket rates apply from branch line points on the Illinois Central-Yazoo & Mississippi Valley system, and on the Tylertown and Covington branches of the New Orleans Great Northern, the other direct connection of the Fernwood Company, involving the same interruption in the continuity of the service by transfer from the branch to the main line as involved at Fernwood and Tylertown on shipments from Knoxo.

3. The Central Company and its subsidiary, the Yazoo & Mississippi Valley, applied the blanket rates from connecting originating carriers, i. e., the Louisiana Railway & Navigation Company, the New Orleans Great Northern, the Gulf & Ship Island and the Mississippi Central, while refusing to extend such rates to points on the Fernwood & Gulf. In this connection, intervenor points out that the term "short line" means nothing, the material point being the originating of the traffic by a prior line; and if a difference be made because of the size of such line it is indefensible discrimination per se.

4. Participation by the Central Company at junctions within producing territory in blanket rates from "short line" points through the intervention of other carriers, e. g., from points on the Alabama & Mississippi and the Mississippi & Western, via the Gulf, Mobile & Northern and Ackerman, Miss.

Intervenor shows that the departure by the Central Company from its original policy of confining the group rates to points on its

own rails has thus become so broad as to make its refusal to extend such group rates to Knoxo an act of discrimination, not to be justified even by competition. It further shows that complainants herein are estopped from setting up competition as a defense of such discrimination, for the reason that they have ignored competition at Knoxo. The Fernwood Company, as shown by the record, had two, and now has three, outlets, one via Fernwood and the Central Company; one via Tylertown (now also via Foxworth) and the New Orleans Great Northern; and since the institution of intervenor's complaint before the commission, one via Columbia and the Gulf & Ship Island; the two latter via their connections other than the Central Company, all of whom were parties defendant before the commission. Knoxo is therefore fundamentally as competitively situated as points on the Mississippi Central,
496 yet is not, like the latter, accorded the group basis of rates; while the resulting discrimination is aggravated by the fact that each of the direct connections of the Fernwood Company, together with its connections beyond, and the Fernwood Company itself, recognize the competition at its junctions, each of such connections joining with the Fernwood Company in protecting the group rates from its junctions with the others.

XX.

Intervenor denies the allegations in paragraph XX of the bill of complaint. It says specifically that the similarity of the findings of the commission in the instant case complained of and the McGowan-Foshee case referred to in said paragraph is nothing more a consistency of action by the commission in drawing similar conclusions from similar facts; and the rights of complainants have been fully recognized in the decision complained of. It further says that the decision of the commission clearly shows that it found the rates from Knoxo discriminatory as compared with the uniform rates maintained from the blanket territory described, including Tylertown and Fernwood, and its order properly provided a definiteness in the test of the proper rates to apply from Knoxo by referring to the rates maintained from those two stations.

XXI.

Intervenor denies all and singular the matters and things alleged in paragraphs XXI, XXII, XXIII, XXIV, and XXV of said bill of complaint, all of which allegations are refuted by the record in said case before the commission.

Wherefore intervenor prays that the bill of complaint herein be dismissed.

L. PALMER,
Attorney for Swift Lumber Company, Intervenor.

497

[File indorsement omitted.]

499 *Motion to assign cause for final hearing.*

Filed Aug. 29, 1921.

United States District Court, Southern District of Mississippi, Jackson Division.

[Title omitted.]

Honorable Richard W. Walker, United States circuit judge, Honorable Rufus E. Foster and Honorable Walter I. Grubb, United States district judges, holding the United States District Court in pursuance of urgent deficiencies act approved October 22, 1913 (39 Stat. 219, 220).

United States of America and Interstate Commerce Commission now come, by their respective counsel, and move the court, in accordance with the statute in such case made and provided (38 Stat. 219, 220), to assign the above-entitled cause for final hearing at the earliest practicable day, to give precedence to the hearing, and in every way to expedite the same.

JULIAN P. ALEXANDER,
United States Attorney.
BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.
P. J. FARRELL,
Solicitor for Interstate Commerce Commission.

500

[File indorsement omitted.]

502 *Order assigning cause for hearing.*

Filed Oct. 31, 1921.

In the District Court of the United States for the Jackson Division of the Southern District of Mississippi.

[Title omitted.]

It is ordered that the above-entitled cause be, and it is, assigned for hearing at New Orleans, Louisiana, at ten o'clock a. m. November 26th, 1921.

It is further ordered that the clerk give notice of this order to the counsel of record in the cause.

Done at New Orleans, this 29th day of October, 1921.

R. W. WALKER,
United States Circuit Judge.
RUFUS E. FOSTER,
United States District Judge.

[File indorsement omitted.]

504 *Final decree.*

Filed Feb. 13, 1922.

In the District Court of the United States for the Jackson Division of the Southern District of Mississippi.

[Title omitted.]

This cause came on to be heard before the Honorable R. W. Walker, circuit judge, the Honorable W. I. Grubb, United States district judge, and the Honorable Edwin R. Holmes, United States district judge, sitting lawfully in pursuance of due notice given, whereupon the cause was argued by counsel and thereupon upon consideration thereof it was ordered, adjudged, and decreed as follows:

1. That the motion of the United States to dismiss be, and the same is hereby, overruled, and leave to plead further not being asked but the cause being submitted for final decree, it is ordered, adjudged, and decreed that as to the United States complainant is entitled to the relief herein set forth;

2. Said cause was further considered upon the intervention of the Interstate Commerce Commission and its motion to dimiss, which is hereby disallowed and overruled, leave to plead further not being asked and said cause being ready for final decision, the relief hereinafter set forth is to be granted;

3. Said intervention of the Swift Lumber Company is hereby dismissed at the cost of the Swift Lumber Company, for which let execution issue;

505 4. It is hereby ordered, adjudged, and decreed that the United States, its agents, employes, and attorneys be and they are hereby, perpetually enjoined and restrained from enforcing or attempting to enforce that certain order made by the Interstate Commerce Commission or the United States in that certain cause before said commission lately depending, styled, "Swift Lumber Company v. Fernwood, Columbia & Gulf Railroad Company, et al.," number 10827 upon its docket, wherein a final order was entered of date of April 5, 1921, whose effective date was from time to time postponed, and that all persons be, and they are hereby enjoined and restrained from in any way attempting to enforce or assert any right or title under said order of said Interstate Commerce Commission in said cause made, and that the same be hereby ordered and adjudged to be null and void and without any force or effect, and that to that end, perpetual injunction shall issue.

Ordered, adjudged, and decreed this the 10 day of February, 1921.

EDWIN R. HOLMES,
U. S. District Judge.
R. W. WALKER,
U. S. Circuit Judge.
O. J. GREELEY,
U. S. District Judge.

[File endorsement omitted.]

506 *Petition for appeal.*

Filed Mar. 3, 1922.

United States District Court, Southern District of Mississippi, Jackson Division.

[Title omitted.]

United States of America, defendant, and Interstate Commerce Commission, and Swift Lumber Company, a corporation, intervening defendants, feeling themselves aggrieved by the final order or decree of the District Court dated February 10, 1922, and filed February 13, 1922, pray an appeal to the Supreme Court of the United States therefrom.

The particulars wherein the defendant and the intervening defendants consider the final order or decree erroneous are set forth in the assignment of errors on file, to which reference is made.

And the defendant and the intervening defendants pray that a transcript of the record, proceedings, and papers on which the
507 final order or decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

E. E. HINDMAN,
United States Attorney,
Southern District of Mississippi.
BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.
P. J. FARRELL,
J. CARTER FORT,
Solicitors for Interstate Commerce Commission.
SWIFT LUMBER COMPANY,
By L. PALMER, *Attorney.*

[File endorsement omitted.]

509 *Assignment of errors.*

Filed Mar. 3, 1922.

United States District Court, Southern District of Mississippi, Jackson Division.

[Title omitted.]

United States of America, defendant, and Interstate Commerce Commission and Swift Lumber Company, intervening defendants, now come by their respective counsel, and in connection with their petition for appeal, file the following assignment of errors on which they will rely on their appeal to the Supreme Court of the United States from the final order or decree of the District Court dated February 10, 1922, and filed February 13, 1922, in the above-entitled cause.

The District Court erred:

I. In granting the motion for preliminary injunction enjoining the order of the Interstate Commerce Commission entered April 5, 1921, and suspending the force and effect of the same, and in not denying the motion.

II. In overruling the motion of the United States to dismiss the petition and in not sustaining the motion.

510 III. In disallowing and overruling the motion of the Interstate Commerce Commission to dismiss the petition, and in not sustaining the motion.

IV. In dismissing the intervention of the Swift Lumber Company at the cost of the company.

V. In entering the following order:

It is hereby ordered, adjudged, and decreed that the United States, its agents, employees, and attorneys, be, and they are hereby perpetually enjoined and restrained from enforcing, or attempting to enforce, that certain order made by the Interstate Commerce Commission or the United States in that certain cause before said commission lately depending, styled, "Swift Lumber Company v. Fernwood, Columbia & Gulf Railroad Company et al.," number 10827 upon its docket, wherein a final order was entered of date of April 5, 1921, whose effective date was from time to time postponed, and that all persons be, and they are hereby, enjoined and restrained from in any way attempting to enforce or assert any right or title under said order of said Interstate Commerce Commission in said cause made, and that the same be hereby ordered and adjudged to be null and void and without any force or effect, and that to that end, perpetual injunction shall issue.

VI. In not finding and holding that the Interstate Commerce Commission on the record of the evidence and proceedings before it had the power and authority to make and enter the order; that the order rested on substantial evidence and that the questions sought to be raised by the bill of complaint were foreclosed by the findings of fact.

VII. In not dissolving the preliminary injunction and dismissing the bill of complaint for want of equity on the final hearing.

Wherefore, defendants, and each of them, pray that the final order or decree of the District Court, dated February 10, 1922, and filed February 13, 1922, be reversed, annulled, and set aside,

511 with directions that the permanent injunction and the preliminary injunction shall be dissolved and the bill of complaint dismissed, and for such other and further order as may be appropriate.

E. E. HINDMAN,
United States Attorney,
Southern District of Mississippi.
BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.
P. J. FARRELL,
J. CARTER TORT,
Solicitors for Interstate Commerce Commission.
SWIFT LUMBER COMPANY,
By L. PALMER, *Attorney.*

[File endorsement omitted.]

512 *Order allowing appeal.*

Filed Mar. 11, 1922.

United States District Court, Southern District of Mississippi, Jackson Division.

[Title omitted.]

In the above-entitled cause, United States of America, defendant, and Interstate Commerce Commission and Swift Lumber Company, intervening defendants, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final order or decree of the District Court, dated February 10, 1922, and filed February 13, 1922, and having also made and filed an assignment of errors, and having in all respects conformed to the statute and rules of court in such case made and provided:

It is ordered and decreed that the appeal be, and the same is hereby, allowed as prayed and made returnable within thirty (30) days from the date hereof, and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings, and papers on which said order or decree was made and entered forthwith to the Supreme Court of the United

513 States.

It is further ordered and decreed that complainant's exhibits filed in said cause and annexed to and made a part of the petition and marked Exhibits—

"A"—Complaint before commission, Swift Lumber Co.;
"B-1"—Answers of carriers;
"C"—Evidence before commission, and exhibits;
"D-1"—Briefs of counsel;
"E"—Examiner's report, March 29, 1920;
"F"—Exceptions to report, Swift Lumber Co.;
"G"—Exceptions to report, Fernwood & Gulf Co.;
"H-1"—Briefs of counsel;
"I"—Decision of commission, April 5, 1921;
"J-1"—Petitions for rehearing;

be incorporated in the record on appeal as original documents in lieu of copies thereof.

R. W. Walker,
United States Circuit Judge.
Edwin R. Holmes,
W. I. Grubb,
United States District Judges.

[File endorsement omitted.]

514 *Citation and service.*

Filed Mar. 11, 1922.

Citation on appeal.

UNITED STATES OF AMERICA, *ss:*

To Illinois Central Railroad Company and Fernwood, Columbia & Gulf Railroad Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof pursuant to an appeal duly allowed and filed in the clerk's office of the United States District Court, Southern District of Mississippi, wherein United States of America, Interstate Commerce Commission, and Swift Lumber Company are appellants and you are appellees, to show cause, if any there be, why the final order or decree annulling and enjoining the order of the Interstate Commerce Commission entered against the appellants in the appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard W. Walker, United States circuit judge, the Honorable William I. Grubb and the Honorable Edwin R. Holmes, United States district judges, this day of March, 1922

R. W. WALKER,
United States Circuit Judge.
EDWIN R. HOLMES,
W. I. GRUBB,
United States District Judges.

Service of a copy of the within citation is hereby admitted and acknowledged this 9th day of March, 1922.

FERNWOOD, COLUMBIA & GULF R. R. Co.,
By MARCELLUS GREEN,
GARNER WYNN GREEN,
Solicitors for Appellee, Fernwood, Columbia & Gulf R. R. Co.

R. V. FLETCHER,
Solicitor for Illinois Central Railroad Company.

[File endorsement omitted.]

515 *Clerk's certificate.*

United States District Court for the Jackson Division of the Southern District of Mississippi.

I, Jack Thompson, clerk of the District Court of the United States for the Southern District of Missisippi, do hereby certify that the foregoing pages contains the correct and original records on file

in my office at Jackson, Miss., of the papers in the case of Illinois Central Railroad Company et al. vs. United States, No. 158, on the dockets of said court.

Witness my hand and seal of said court hereunto affixed at Jackson, Miss., in said district this March 22, 1922.

[SEAL.]

JACK THOMPSON,
Clerk U. S. District Court,
Southern District of Mississippi.

516 *Statement on behalf of the United States to omit certain parts in printing the transcript.*

Filed May 17, 1922.

In the Supreme Court of the United States, October Term, 1921.
[Title omitted.]

To the clerk:

Please omit from the printing of the transcript in the above-entitled cause the following matter, viz:

1. Brief for Fernwood & Gulf Railroad Co. (printed), signed by Messrs. Green & Green, filed February 6, 1920, with I. C. C.
2. Brief for Swift Lumber Co. (printed), signed by Mr. L. Palmer, filed February 6, 1920, with I. C. C.
3. Brief for defendants other than F. & G. R. R. Co., signed by Messrs. Humburg, Horton, Eaton, and Fletcher, of date February 10, 1920, and filed February 13, 1920, with I. C. C.
4. Stenographer's minutes (typewritten), date May 15, 1920, arguments of Mr. Garner W. Green and Mr. A. P. Humburg before I. C. C.
5. Argument (typewritten), signed by L. Palmer, attorney for complainant, consisting of 5 pages.
6. Letter (typewritten), Judge Foster to Mr. Thompson, clerk; date, August 11, 1921, filed August 12, 1921.

517 7. Telegram (typewritten), Messrs Green & Green to P. J. Farrell, Esq.; date, August 11, 1921.

8. Telegram (typewritten), Messrs. Green & Green to P. J. Farrell, Esq.; date, August 12, 1921.
9. Telegram (typewritten), Messrs. Green & Green to Blackburn Esterline, Esq.; date, August 12, 1921.
10. Telegram (typewritten), Messrs. Green & Green to Blackburn Esteline, Esq.; date, August 11, 1921.

JAMES M. BECK,
Solicitor General.
BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

[File endorsement omitted.]

522 *Stipulation as to printing of record.*

Filed Sept. 18, 1922.

In the Supreme Court of the United States, October term, 1923.

In order to avoid the great expense and delay of reproducing the exhibits offered in evidence in this case, it is agreed by counsel for the parties that the pleadings and oral testimony shall constitute the record as printed for the use of this court, reserving the right to both parties to refer to the exhibits and to print any exhibit for the convenience of the court.

JAMES M. BECK,
Solicitor General.
R. V. FLETCHER,
Counsel for Appellees.

523 *Stipulation as to printing of record.*

Filed Sept. 18, 1922.

In the Supreme Court of the United States, October Term, 1923.

[Title omitted.]

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JAMES M. BECK,
Solicitor General.
MARCELLUS GREEN,
GARNER W. GREEN,
Counsel for Appellees.

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[File endorsement omitted.]

[Indorsement on cover:] File No. 28900. S. Mississippi D. C. U. S. Term No. 40. The United States of America, Interstate Commerce Commission, and Swift Lumber Company, Appellants, vs. Illinois Central Railroad Company and Fernwood, Columbia & Gulf Railroad Company. Filed May 1st, 1922. File No. 28900.